



Remote Meeting Instructions for the June 15, 2021, City Council Meeting:

In order to comply with all health orders and State guidelines to stop the spread of the COVID-19 Coronavirus, **no physical location, including the City Council Chambers, will be set up for viewing or participating in this Council Meeting.**

You can view this Council Meeting by following the instructions below to watch the YouTube live stream. By utilizing this option to view the meeting, you will not be able to provide live input during the meeting. To provide live input, see the "In real time" instructions near the bottom of this page.

- From your laptop or computer, click the following link or enter it manually into your Web Browser: (www.youtube.com/CityofGreeley)
- Clicking the link above will take you to the City of Greeley's YouTube Channel.
- Once there, you will be able to view the meeting!

Citizen input and public comment for items appearing on this agenda as public hearings are valuable and welcome!

Anyone interested in participating and sharing public comments has a few of options:

Via email? – Submit to cityclerks@greeleygov.com

All comments submitted this way will be read into the record at the appropriate points during this meeting in real time. Comments can be submitted up to and throughout this meeting.

Via traditional Mail? - Address to the Greeley City Clerk's Office, 1000 10th Street, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Again, written comments received by mail will also be read into the record in real time.

In real time? - <https://greeleygov.zoom.us/j/91910136877>

Clicking the link above will give you access to the live meeting where you will become a virtual audience member and be able to speak under Citizen Input on items not already on the agenda or during a scheduled public hearing.

Please visit the City's website at <https://greeleygov.com/government/council> to view and download the contents of the June 15, 2021, City Council Meeting. You are also welcome to call the City Clerk's Office at 970-350-9740 with any special needs or questions that you may have.



Mayor
John Gates

Councilmembers

Tommy Butler
Ward I

Brett Payton
Ward II

Michael Fitzsimmons
Ward III

Dale Hall
Ward IV

Ed Clark
At-Large

Kristin Zasada
At-Large

**A City Achieving
Community Excellence**
Greeley promotes a
healthy, diverse economy
and high quality of life
responsive to all its
residents and
neighborhoods,
thoughtfully managing its
human and natural
resources in a manner
that creates and sustains
a safe, unique, vibrant
and rewarding
community in which to
live, work, and play.

City Council Agenda

June 15, 2021 at 6:00 PM

This meeting will be conducted remotely. (See previous page for participation instructions and/or to view the YouTube live stream.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Agenda
5. [Recognitions and Proclamations](#)
6. Citizen Input
7. Reports from Mayor and Council Members
8. [Initiatives from Mayor and Council Members](#)

Consent Agenda

The Consent Agenda is a meeting management tool to allow the City Council to handle several routine items with one action.

Council or staff may request an item be "pulled" off the Consent Agenda and considered separately under the next agenda item in the order they were listed.

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9. [Acceptance of the Report of the May 25, 2021 City Council Worksession](#)
 10. [Approval of the June 1, 2021 City Council Proceedings](#)
 11. [Consideration of a resolution of the City Council of the City of Greeley, Colorado, extending the City of Greeley Local Disaster Declaration of March 16, 2020 \(updated on April 21, 2020, June 2, 2020, August 11, 2020, November 17, 2020, January 19, 2021\) related to the COVID-19 Pandemic](#)
 12. [Consideration of a resolution adopting amendments to City Council's Policies and Protocol](#)
 13. [Introduction and first reading of an ordinance changing the official zoning map of the City of Greeley, Colorado, from PUD \(Planned Unit Development - Promontory Preliminary PUD\) to PUD \(Planned Unit Development - Promontory Preliminary PUD, Areas F, L & M, 2nd](#)

Amendment) zoning for approximately 99.233 acres, located east of Promontory Parkway, south of 16th Street and north of future 20th Street

14. Introduction and first reading of an ordinance amending portions of the Greeley Municipal Code, Title 22, Chapter 11 (Electrical Code) as it relates to adopting the 2020 edition of the National Electrical Code, one- and two-family dwellings, Type NM cable, central heating equipment, and auxiliary grounding of photovoltaic systems
15. Introduction and first reading of an ordinance authorizing the sale of city-owned property located in Section 22, Township 8 North, Range 65 West Of The 6th P.M., Weld County, Colorado, containing 282.00 acres of land, more or less, commonly referred to as the Hasbrouck Farm and city-owned property located in Section 28, Township 8 North, Range 65 West Of The 6th P.M., Weld County, Colorado, containing 156 acres of land, more or less, commonly referred to as the Varra Farm
16. Introduction and first reading of an ordinance making supplemental assessments against the lots and lands in Local Improvement District No. 463 to cover the costs of the maintenance of landscaping around the perimeter of Range View Estates (35th Avenue and 20th Street) in the City of Greeley, Colorado
17. Consideration of a change order in the amount of \$395,737.00 to the Brown and Caldwell contract for the Concept Design for the Terry Ranch Water Supply Project, bringing the revised contract amount from \$1,411,009.00 to \$1,806,746.00

End of Consent Agenda

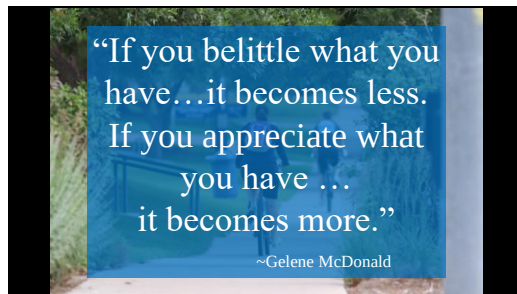
18. Pulled Consent Agenda Items
19. Public hearing and final reading of an ordinance appropriating additional sums to defray the expenses and liabilities of the City of Greeley for the balance of the fiscal year of 2021 and for funds held in reserve for encumbrances at December 31, 2020
20. Public hearing and final reading of an ordinance granting a Non-Exclusive Franchise to Allo Greeley, LLC for the Right to Make Reasonable Use of, and Erect, Construct, Operate, and Maintain through the Public Rights-of-Way, Easements, and Other Public Property and Equipment Necessary and Appurtenant to the Operation and Maintenance of a Cable System and the Provision of Cable Services to Citizens within the City
21. Public hearing to consider a change of zone from PUD (Planned Unit Development - Promontory Preliminary PUD) to PUD (Planned Unit Development - Promontory Preliminary PUD, Areas M & N, 1st Amendment) zoning within Tract B, Promontory Imagine School, Second Filing only for approximately 40.91 acres of property, located north of Highway 34 Bypass, east of Promontory Parkway and south of future 20th Street, known as Promontory PUD, Areas M & N, 1st Amendment, and final reading of an ordinance changing the official zoning map to reflect the same
22. Public hearing for an ordinance amending Title 24 of the Greeley Municipal Code relating to the Development Code by deleting the current Title in its entirety and adding a new Chapter 1 relating to General Provisions and a new Chapter 2 relating to Procedures

23. [Public hearing to consider a request for a combined Preliminary/Final PUD \(Planned Unit Development\) approval for an auto repair use on property located at 2505 46th Avenue, and a final plat and site plan for the Suffolk Subdivision 4th Filing, 1st Amendment](#)
24. [Appointment of applicants to the Commission on Disabilities, Construction Trades Advisory & Appeals Board, Downtown Development Authority, Historic Preservation Commission, Human Relations Commission, Rodarte Community Center Advisory Board, Water & Sewer Board, and Youth Commission](#)
25. [Scheduling of Meetings, Other Events](#)
26. Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and at any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements and ordinances
27. [Consideration of an Executive Session to determine positions, develop strategy and instruct negotiators regarding collective bargaining with the Greeley Police Officers Union](#)
28. Adjournment

Slide 1



Slide 2



At each Council Meeting, we recognize the people, organizations and businesses that make Greeley Great.

Tonight it's my turn to announce the recognitions. I'll start with a quote, "If you belittle what you have, it becomes less. If you appreciate what you have, it becomes more." With these announcements we are appreciating the good work of our residents, showing support for their efforts, and encouraging everyone to share the word that Greeley is Great.

Slide 3



The Weld County Department of Human Services (DHS) has been awarded the 2020 C-Stat Distinguished Performance Award by The Colorado Department of Human Services in recognition of the county's superior efforts to adequately serve its residents. The Distinguished Performance Award recognizes counties that are timely, safe and accurate in work and meeting goals.

Slide 4



University of Northern Colorado President Andy Feinstein has been appointed to the NCAA Division I Board of Directors. Mr. Feinstein will join the board this summer and work with other university leaders to oversee and direct Division I institutions related to sport administration, long-range planning and championship events.

Slide 5



Congratulations to The Apartments at Maddie for winning the Best of Projects category in the 2021 Governor's Awards for Downtown Excellence.

Slide 6



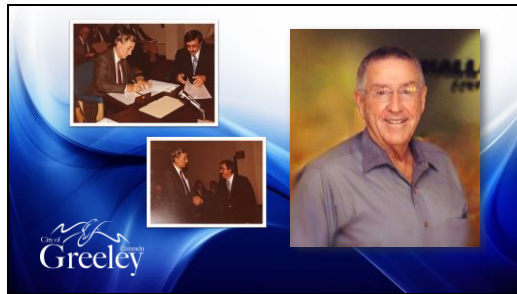
David Lerach, Ph.D., an associate professor of Earth and Atmospheric Sciences at the University of Northern Colorado and expert on thunderstorms and cloud physics, has been awarded a Fulbright Scholar Award to study how pollution in the northern Italian Alps may impact precipitation patterns across the region, and more specifically, how much precipitation falls, where it falls and whether it's being shifted between different watersheds.

Slide 7



And that's What's Great about Greeley.

Slide 8



Tonight we would like to send a hearty Happy 90th Birthday to former Mayor and Councilmember, George Hall. Mr. Hall served as a Ward III Council Member from 1965 to 1973. He continued his service to the City as Mayor from 1973 through 1981. Additionally, he served on 5 Charter Review Committees, serving as Chair for four of those. An ongoing ambassador and champion for Greeley, Mr. Hall has been involved with many City projects, tasks and initiatives while growing his own innovative business in the region. Thank you, George, for your love of our community and, again, Happy Birthday!



Alzheimer's and Brain Awareness Month

WHEREAS, Alzheimer's disease is a progressive neurodegenerative brain disorder that tragically robs individuals of their memories and leads to progressive mental and physical impairments; and

WHEREAS, there are no known treatments to prevent, cure or slow the progression of Alzheimer's disease, the sixth-leading cause of death in the United States; and

WHEREAS, more than 6.2 million people in the United States are living with Alzheimer's disease, including 76,000 in Colorado; and

WHEREAS, volunteer caregivers across the U.S. bear an extraordinary burden in caring for loved ones, with more than 11 million caregivers providing over 15.3 billion hours of unpaid care for those with Alzheimer's and other dementias in 2020; and, in Colorado, more than 158,000 family members and friends provided 184 million hours of unpaid care; and

WHEREAS, the Alzheimer's Association estimates the direct costs of caring for those with Alzheimer's to the United States in 2021 at \$355 billion; and

WHEREAS, the efforts of the Alzheimer's Association to provide information and educational programs, raise funds and promote awareness to fight Alzheimer's disease and other dementias will improve the quality of human life for those living with Alzheimer's disease and their caregivers.

NOW, THEREFORE, I, John Gates, by virtue of the authority vested in me as Mayor of the City of Greeley, do hereby proclaim June 2021, as Alzheimer's and Brain Awareness Month.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of Greeley, Colorado, this 15th day of June, 2021.

John Gates
Mayor

Greeley City Council

Status Report of Council Initiatives

Initiative No.	Council Request	Council Meeting, Worksession, or Committee Meeting Date Requested	Status or Disposition (After completion, item is shown one time as completed and then removed.)	Assigned to:
03-2021	Also related to the Poudre River Trail, Council Member Hall noted the section of the trail known as the Narrows is facing increasing risks of erosion, with some portions in danger of falling into the river, and no available alternative areas for trail placement in that vicinity. The School of Mines will do a project to work on some engineering solutions for the area, in addition to other engineering studies that have already been done. Council Member Hall requested the formation of a committee, which he would chair, to review and determine options to move forward in addressing this with the assistance of City staff. City Manager Otto added information about potential Capital Improvement Projects through this area, and Council Member Hall provided information about existing potential rough cost estimates in response to questions from the Council.	February 2, 2021 Council Meeting	Update: 04/20/2021 Council Member Hall provide an update on his initiative regarding the Poudre Narrows. He reported that the committee had its first meeting and that he is pleased with engagement from City staff and the community. A committee, chaired by Council Member and Poudre River Trail Corridor Chairman Hall, has been formed with representatives from the Poudre Trail Corridor Board, Culture, Parks and Recreation/Natural Areas and Trails, Public Works, Water and Sewer, the Poudre River Run Master HOA, a member of the Parks and Recreation Advisory Board, and a representative from the Ditch #3 Board. Committee Chairman Hall has also referenced initial communications with Otak Engineering, a consulting firm who produced a study of this area in 2018 for the City of Greeley, as well as the Colorado School of Mines engineering students who will conduct a capstone project this semester towards a suggested course of action and suggested	Andy McRoberts

Initiative No.	Council Request	Council Meeting, Worksession, or Committee Meeting Date Requested	Status or Disposition (After completion, item is shown one time as completed and then removed.)	Assigned to:
			funding mechanism(s). An initial assessment with design parameters, recommended course(s) of action including recommended funding sources, is expected in June, 2021 post consultation with the Mines student project and engineering consultants. Although this project will carry on m practicality through committee work	
07-2021	Council Member Zasada attained support for an initiative resulting from complaints about current code enforcement efforts. A two part review of enforcement practices was requested: 1) Review of what current code compliance looks like – how many code compliance officers are there, how many cases do they each have, etc. 2) Analysis of options to increase the current level of enforcement efforts and potentially toughen the existing nuisance ordinance.	June 1, 2021 Council Meeting	Update: 06/11/2021 Staff is compiling information on current code compliance operations and plans for stronger enforcement, with a workshop planned with Council on July 13	Brad Mueller

Consent Agenda

The Consent Agenda is a meeting management tool to allow the City Council to handle several routine items with one action.

Once the Clerk has read each Consent Agenda item into the record, along with Council's recommended action, Council or staff may request the item be "pulled" off the Consent Agenda and considered separately under the next agenda item in the order they were listed.

Council's Recommended Action

To approve Items No. _____ through _____ or

To approve Items No. _____ through _____ with the exceptions of No.(s) _____

Council Agenda Summary

Key Staff Contact: Anissa Hollingshead, City Clerk, 970-350-9742

Title:

Acceptance of the Report of the City Council Worksession

Summary:

A City Council Worksession was held virtually utilizing the Zoom Platform.

Decision Options:

1. To accept the Report as presented; or
2. Amend the Report if amendments or corrections are needed, and accept as amended.

Council's Recommended Action:

A motion to accept the Report as presented.

Attachments:

Report

City of Greeley, Colorado
COUNCIL WORKSESSION REPORT
May 25, 2021

1. Call to Order

Mayor John Gates called the remote meeting to order at 6:00 p.m. via the City's Zoom platform.

2. Pledge of Allegiance

Mayor Gates led the Pledge of Allegiance to the American Flag.

3. Roll Call

Cheryl Aragon, Deputy City Clerk, called the roll.

PRESENT

Mayor John Gates

Council Member Tommy Butler

Council Member Brett Payton

Council Member Dale Hall

Council Member Michael Fitzsimmons

Council Member Ed Clark

Council Member Kristin Zasada

4. Reports from Mayor and Council Members

Council Member Hall reported that the Poudre River Trail has been topped by the river in a few different locations, due largely to runoff. Additionally, he spoke of the availability of a new trishaw designed to help our senior population access and move around on the trail.

5. November 2021 Keep Greeley Moving (KGM) Sales Tax Reauthorization Discussion – Survey/Polling Results and Next Steps

Paul Fetherston, Deputy City Manager, along with Alex Dunn, Strategies360, reviewed the public polling and outreach done of 502 registered Greeley voters between April 21-25, 2021. Those polling results were also made part of the Council agenda packet.

Deputy Manager Fetherston noted that during its May 19th meeting, the Citizen Budget Advisory Committee met to review the results of the polling and offered unanimous recommendation for renewal of the Keep Greeley Moving Tax at the current rate with no increase. He also noted that with Council consensus, introduction of the ordinance would be set for August 3rd and final reading of the ordinance and a public hearing would be set for August 17th.

Following Council discussion, consensus was reached to proceed with the renewal of

the Keep Greeley Moving tax at the current rate with no increase as outlined by staff, as well as a communication plan for the community.

6. Front Range Passenger Rail Project Update

Will Jones, Deputy Director of Public Works, provided a project overview, potential project and legislative next steps, and Greeley's considerations and potential next steps. He was joined in these discussions by David Singer and James Souby with the Colorado Department of Transportation (CDOT).

After much discussion, Council Members expressed concern with this project given the lack of benefit to Greeley residents and tax payers.

Council consensus was to provide an official letter noting that significant concern over the staff-mentioned considerations to CDOT and Colorado Legislative Representatives.

7. COVID-19 Update

Dan Frazen, Emergency Manager, provided a COVID-19 update and referenced a packet of information which included the new link to the City's dashboard.

Council Member Clark requested an opportunity to be on the City's policy committee as it relates to COVID-19 response. He expressed concerns with still being at 50 percent, a slow return to the office roll out, and with the calls and inquiries he is getting about customer service. Council Member Zasada expressed concerns with the slow roll out as well, and Mayor Gates noted calls he has gotten as well and stated that he would discuss this further with City Manager Roy Otto upon his return.

Raymond Lee, Deputy City Manager, shared that all Council and community concerns are being taken into consideration when planning for returning to the office. He also emphasized that all City services are operating at 100 percent.

Anissa Hollingshead, City Clerk, reported on the plan for Councils return to in-person meetings, and the work being done to offer a hybrid option for those wanting to continue to participate remotely. She noted that this work will be inclusive of hybrid meetings for all of the City's Boards and Commissions.

Andy McRoberts, Culture, Parks & Recreation Director, provided an update on the status of facility capacities, hours, and cleaning protocols.

8. Scheduling of Meetings, Other Events

There were no additional meetings or events scheduled.

Council Member Butler asked that staff bring back the cost, timing and any other consideration for conducting polling about a tax for open space for this election year.

Mayor Gates expressed his support for that, and consensus was reached for staff to proceed with this research.

There being no further business to come before the Council, the Worksession was adjourned at 7:55 p.m.

John Gates, Mayor

Cheryl Aragon, Deputy City Clerk

Council Agenda Summary

Key Staff Contact: Anissa Hollingshead, City Clerk, 350-9742

Title:

Approval of the City Council Proceedings

Summary:

A meeting of the City Council was held virtually utilizing the Zoom Platform.

Decision Options:

1. To approve the proceedings as presented; or
2. Amend the proceedings if amendments or corrections are needed, and approve as amended.

Council's Recommended Action:

A motion to approve the City Council proceedings as presented.

Attachments:

Proceedings

City of Greeley, Colorado
CITY COUNCIL PROCEEDINGS
June 01, 2021

1. Call to Order

Mayor John Gates called the remote meeting to order at 6:00 p.m. via the City's Zoom platform.

2. Pledge of Allegiance

Mayor Gates led the Pledge of Allegiance to the American Flag.

3. Roll Call

Anissa Hollingshead, City Clerk, called the roll.

PRESENT

Mayor John Gates

Council Member Tommy Butler

Council Member Brett Payton

Council Member Michael Fitzsimmons

Council Member Ed Clark

Council Member Kristin Zasada

EXCUSED

Council Member Dale Hall

4. Approval of the Agenda

The agenda was approved as presented.

5. Recognitions and Proclamations

Mayor Gates presented a proclamation recognizing June as Pride Month.

Mayor Gates also welcomed Jim Riesberg, Jazz Garrison, and Bob Murphy to present the AARP Network of Age Friendly Communities Certificate of Induction for Greeley upon its acceptance to the network. Bob Murphy, the Colorado state president of AARP, offered remarks. Jim Riesberg noted that Jazz Garrison and Shawn Walcott with the United Way would be conducting community surveys to establish benchmarks associated with the induction into the network. Garrison and Walcott also offered brief remarks.

Council Member Fitzsimmons presented the *What's Great About Greeley* Report.

6. Citizen Input

No written comments were received and there was no one in the virtual meeting audience wishing to provide feedback.

7. Reports from Mayor and Council Members

Mayor Gates remarked about his hope that he represented the Council well in participating in the Memorial Day ceremony at Linn Grove Cemetery remembering and honoring those men and women who paid the ultimate sacrifice in service to our country. Despite the expectation of heavy rain, there was no rain and there was a large crowd in attendance for the ceremony.

8. Initiatives from Mayor and Council Members

Council Member Zasada spoke related to the household occupancy question. She noted there has been a lot of citizen input about increasing occupancy standards, and noted a large volume of complaints about current enforcement of the code, including occupancy as well as other issues like trash. She requested consensus for an initiative with two parts:

- 1) A review of what current code compliance looks like – how many code compliance officers does the City have, how many cases do they have, etc.
- 2) Looking at what can be done to beef up or increase the enforcement activities currently done, including taking a hard look at how occupancy and other measures are currently enforced, and then how that enforcement might be made tougher.

In response to questions about what it would mean if the item relating to household occupancy were to come off the agenda tonight, Council Member Zasada noted this initiative is a totally separate issue from what is on the agenda. City Manager Roy Otto sought to further clarify on the second part of the request including discussions had with different council members regarding how to beef up the existing nuisance ordinance to be able to shut down problem properties. There was consensus to move forward on the initiative.

City Manager Otto asked about the whether the Council wished to discuss the information provided in the agenda packet regarding Council Member Butler's initiative around additional polling regarding a potential 2021 ballot question about funding for open space. It was noted this should be part of the next work session with the full Council present to discuss possible next steps.

Consent Agenda

Council Member Zasada requested to pull item 17 from the consent agenda.

Council Member Zasada moved, seconded by Council Member Payton, to approve the recommended actions on items 9-16, and 18.

The motion carried 6-0.

Excused: Council Member Hall.

9. Acceptance of the Report of the April 27, 2021, City Council Worksession Report

The Council action recommended and approved was to accept the report as presented.

10. Approval of the City Council Proceedings of May 4, 2021

The Council action recommended and approved was to approve the proceedings as presented.

11. Acceptance of the Report of the May 11, 2021, City Council Worksession Report

The Council action recommended and approved was to accept the report as presented.

12. Consideration of a resolution authorizing the City to enter into an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) for construction of the 59th Avenue and "O" Street intersection improvements.

The Council action recommended was to adopt the resolution.

Resolution No. 17, 2021 authorizing entering into an IGA with CDOT was adopted.

13. Consideration of a resolution of the City of Greeley City Council authorizing the City to enter into an intergovernmental agreement with the City of Evans for the construction of improvements to the Two Rivers Parkway and 37th Street intersection

The Council action recommended was to adopt the resolution.

Resolution No. 18, 2021 authorizing entering into an IGA with the City of Evans was adopted.

14. Introduction and first reading of an ordinance appropriating additional sums to defray the expenses and liabilities of the City of Greeley for the balance of the fiscal year of 2021 and for funds held in reserve for encumbrances at December 31, 2020

The Council action recommended and approved was to introduce the ordinance and schedule the public hearing and final reading for June 15, 2021.

15. Introduction and first reading of an ordinance amending Title 24 of the Greeley Municipal Code relating to the Development Code by deleting the current Title in its entirety and adding a new Chapter 1 relating to General Provisions and a new Chapter 2 relating to Procedures.

The Council action recommended and approved was to introduce the ordinance and schedule the public hearing and final reading for June 15, 2021, and second reading for September 21, 2021.

16. Introduction and First Reading of an Ordinance Granting a Non-Exclusive Franchise to ALLO Greeley, LLC for the Right to Make Reasonable Use of, and Erect, Construct, Operate, and Maintain through the Public Rights-of-Way, Easements, and

Other Public Property and Equipment Necessary and Appurtenant to the Operation and Maintenance of a Cable System and the Provision of Cable Services to Citizens within the City

The Council action recommended and approved was to introduce the ordinance and schedule the public hearing and final reading for June 15, 2021.

17. Introduction and first reading of an ordinance amending Title 24 of the Greeley Municipal Code regarding household occupancy standards by amending the definition of “family” in Section 24-5

This item was pulled from the consent agenda to allow for discussion.

18. Introduction and first reading of an ordinance changing the official zoning map of the City of Greeley, Colorado, from PUD (Planned Unit Development - Promontory Preliminary PUD) to PUD (Planned Unit Development - Promontory Preliminary PUD, Areas M & N, 1st Amendment) zoning within Tract B, Promontory Imagine School, Second Filing only for approximately 40.91 acres of property, located north of Highway 34 Bypass, east of Promontory Parkway and south of future 20th Street.

The Council action recommended and approved was to introduce the ordinance and schedule the public hearing and final reading for June 15, 2021.

End of Consent Agenda

19. Pulled Consent Agenda Items

17. Introduction and first reading of an ordinance amending Title 24 of the Greeley Municipal Code regarding household occupancy standards by amending the definition of “family” in Section 24-5

Council Member Zasada requested a clarification about the new definition of family being proposed. Brad Mueller, Community Development Director, offered clarifying comments, including directing Council to pages 367 and 370 of the packet for further points of clarification. He noted there is also a short PowerPoint that has been prepared for the public hearing on this item that could be presented. Mayor Gates read the title of this item into the record and then invited Director Mueller to proceed. Planner Caleb Jackson walked through the PowerPoint slides available in the agenda packet on this item.

Discussion on the topic by Council members included:

- Clarification regarding the addition of marriage as a component of the family definition, which would then count a married couple as a family unit and would allow an additional unrelated adult to live in a household with them, whereas currently two adults married to each other are considered two unrelated adults living together.

- Issues with allowing people to have additional renters move into their single family homes, and a desire to not see that occur and keep the intent of single family neighborhoods being for single families.
- Confusion about the current definition not aligning with what most people think constitutes a family.

Council Member Zasada moved, seconded by Council Member Clark, to pull this initiative and kill it, and leave the occupancy as it is to protect the integrity of Greeley's neighborhoods.

Additional discussion by the Council included:

- The challenging nature of struggling with this proposal and some of the confusion, and a hope that it comes back again at another time with more work.
- Feedback from residents to Council members ranging from mostly negative for most Council members to almost all positive for others.
- The role of enforcement in this issue.
- The impact of supply on prices in housing.
- Expressing a desire for this to come back to a work session in the future to sit down face to face and work together on.

The motion carried 5-1 to deny the ordinance.

Ayes: Council Members Payton, Fitzsimmons, Clark, Zasada, and Mayor Gates.

Nays: Council Member Butler.

Excused: Council Member Hall.

20. Appointment of applicants to the Citizen Transportation Advisory Board, Human Relations Commission, and Youth Commission

The following appointments were made by the Council by written ballot:

- Citizen Transportation Advisory Board – Thomas Donkle and directed staff to recruit for additional applicants.
- Human Relations Commission – Julie Lewis and directed staff to recruit for additional applicants.
- Youth Commission – David Andersen, Amelia Benavidez, Brookelynn Hernandez, Claire Willard, and directed staff to recruit for additional applicants.

21. Scheduling of Meetings, Other Events

No other meetings or events were scheduled.

22. Consideration of a motion authorizing the City Attorney to prepare any required resolutions, agreements, and ordinances to reflect action taken by the City Council at this meeting and at any previous meetings, and authorizing the Mayor and City Clerk to sign all such resolutions, agreements and ordinances

Council Member Payton moved, seconded by Council Member Zasada, to approve the above authorizations.

Excused: Council Member Hall.

23. Adjournment

There being no further business before the Council, Mayor Gates adjourned the meeting at 6:57 p.m.

John Gates, Mayor

Anissa N. Hollingshead, City Clerk

Council Agenda Summary

Key Staff Contact: Brian Kuznik, Fire Chief, 970-350-9501

Title:

Consideration of a resolution of the City Council of the City of Greeley, Colorado, extending the City of Greeley Local Disaster Declaration of March 16, 2020 (updated on April 21, 2020, June 2, 2020, August 11, 2020, November 17, 2020, January 19, 2021) related to the COVID-19 Pandemic

Summary:

The Mayor declared a disaster emergency on March 16, 2020 due to the COVID-19 pandemic. The declaration has been extended five times and the current declaration expires on June 15, 2021. While COVID-19 infection rates in the community are decreasing and vaccination rates are increasing, the City remains in a Recovery Phase to the pandemic. The City continues to incur reimbursable expenses supporting COVID-19 Vaccination Clinics in the City of Greeley until July 17, 2021. Weld County and the State of Colorado are currently under COVID-19 disaster declarations, and they are not expected to expire until the end of June. According to the City Attorney, the City needs to remain under a local disaster emergency (LDE) declaration to enable City Council the ability to conduct remote meetings if necessary. The Council's hybrid meeting technology should be operational after June 22, 2021. The Office of Emergency Management (OEM) recommends that the COVID-19 LDE declaration be extended until July 20, 2021.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	Federal Grant Funding
What is the annual impact?	Unknown
What fund of the City will provide Funding?	NA
What is the source of revenue within the fund?	NA
Is there grant funding for this item?	Yes
If yes, does this grant require a match?	No, as of January 2021
Is this grant onetime or ongoing?	Ongoing
Additional Comments:	

Legal Issues:

None.

Other Issues and Considerations:

None.

Applicable Council Priority and Goal:

Image: Reinforce Greeley's vision as an attractive and vibrant community in which to live, learn, work and play.

Safety: Manage the health, safety and welfare in a way that promotes a sense of security and well-being for residents, businesses and visitors.

Economic Health & Development: Foster and maintain public and private investment in business development.

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

- 1) Adopt the resolution as presented; or
- 2) Amend the resolution and adopt as amended; or
- 3) Deny the resolution; or
- 4) Continue consideration of the resolution to a date certain.

Council's Recommended Action:

A motion to adopt the Resolution.

Attachments:

Resolution

**CITY OF GREELEY, COLORADO
RESOLUTION NO. __, 2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREELEY,
COLORADO, EXTENDING THE CITY OF GREELEY LOCAL DISASTER
DECLARATION OF MARCH 16, 2020 RELATED TO COVID-19**

WHEREAS, on March 16, 2020, pursuant to C.R.S. § 24-33.5-709, and the emergency management and operations plans and resolutions of the City of Greeley, Colorado, Mayor John Gates declared a local disaster emergency due to the occurrence of an imminent threat of widespread or severe damage, injury or loss of life or property resulting from the Coronavirus disease 2019 (COVID-19) requiring emergency action to avert danger or damage within the City of Greeley, and requiring activation of State and Federal assistance programs; and

WHEREAS, on March 17, 2020 the City Council ratified the Declaration of Local Disaster Emergency and extended it until April 21, 2020;

WHEREAS, on April 21, 2020 the City Council renewed the Declaration of Local Disaster Emergency and extended it until June 2, 2020; and

WHEREAS, on June 2, 2020 the City Council renewed the Declaration of Local Disaster Emergency and extended it until August 11, 2020; and

WHEREAS, on August 11, 2020 the City Council renewed the Declaration of Local Disaster Emergency and extended it until November 17, 2020; and

WHEREAS, on November 17, 2020 the City Council renewed the Declaration of Local Disaster Emergency and extended it until January 19, 2021; and

WHEREAS, on January 19, 2021 the City Council renewed the Declaration of Local Disaster Emergency and extended it until June 15, 2021; and

WHEREAS, the COVID-19 pandemic is on-going and therefore, the City Council finds that it is appropriate and in the interests of the public health, safety, and welfare; and to further property protection, for the City Council to extend the Local Disaster Declaration until the date specified herein.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
GREELEY, COLORADO:**

Section 1. That the City Council hereby confirms, determines, and declares that there is a local disaster in Greeley, Colorado, to wit, the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID-19, including the presence and likelihood of additional cases, requiring emergency action to avert danger or damage.

Section 2. That the effect of this resolution shall be to continue the Local Disaster Declaration signed by Mayor Gates on March 16, 2020, which is attached hereto as Exhibit A and incorporated herein by this reference. Further, this declaration shall authorize the continued response and recovery aspects of any and all applicable local and interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under such plans.

Section 3. That the City Manager is directed and authorized to continue coordination with internal and external partners and to direct city staff as appropriate and necessary to address the local disaster emergency.

Section 4. That the City Council directs the City Manager to implement steps for long term continuity of government services.

Section 5. That the City Council hereby extends the Local Disaster Declaration until July 20, 2021 at which time City Council may resolve to extend the Local Disaster Declaration for an additional period.

Section 6. That the City Clerk is directed to ensure this resolution and declaration is promptly filed with the appropriate authorities.

PASSED AND ADOPTED, SIGNED AND APPROVED this ____ day of ____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

Exhibit ALOCAL DISASTER DECLARATION

WHEREAS, on March 16, 2020, the City of Greeley Office of Emergency Management (OEM) advised the Greeley City Council of a disaster (as that term is defined in the Colorado Disaster Emergency Act, C.R.S. §24-33.5-702, *et seq.*) currently present in the City of Greeley, to wit, the occurrence of an imminent threat of widespread or severe damage, injury or loss of life or property resulting from the Coronavirus disease 2019 (COVID-19) requiring emergency action to avert danger or damage within the City of Greeley, and requiring activation of State and Federal assistance programs; and

WHEREAS, the Governor of Colorado, by Executive Order D 2020 03, has declared a statewide disaster emergency due to the presence of COVID-19 in the state. The Executive Order identifies the potential for community spread and, among other things, activates disaster response and recovery aspects of applicable state, local and inter-jurisdictional disaster emergency plans.

WHEREAS, the Office of Emergency Management (OEM) has recommended that the City Council declare a local disaster due to the presence of COVID-19 in the community; and

WHEREAS, pursuant to C.R.S. §24-33.5-709 and the Emergency Management Resolution of Greeley, Colorado, the City Council has authorized the Mayor to declare a **local disaster emergency**.

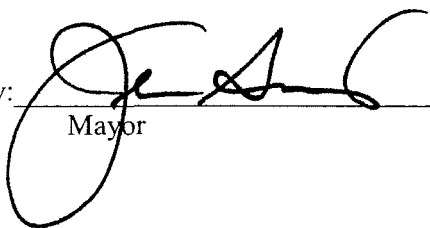
Now therefore be it resolved that:

1. There is hereby declared to be a local disaster in the City of Greeley, Colorado, due to the imminent threat of widespread or severe damage, injury, or loss of life or property, due to the presence and spread of COVID-19 requiring activation of State and Federal assistance programs.
2. The effect of this declaration shall be to activate the recovery aspects of any and all applicable local and inter-jurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under such plan.
3. The effect of this declaration hereby provides access to and spending of all emergency funds for response, recovery, aid, and assistance for this local disaster held by the City in accordance with Article 10, Section 20 of the Colorado Constitution.
4. Be it further resolved that this declaration shall be effective upon the date and time given below, and shall remain in effect for a period not to exceed 7 days thereafter except by or with the consent of a majority of the members of the City Council. True copies of this declaration shall be filed promptly with the Colorado Office of Emergency Management (OEM) (within the Division of Homeland Security and Emergency Management (DHSEM)) and with the City Clerk and shall be promptly distributed to the appropriate representatives of the news media.

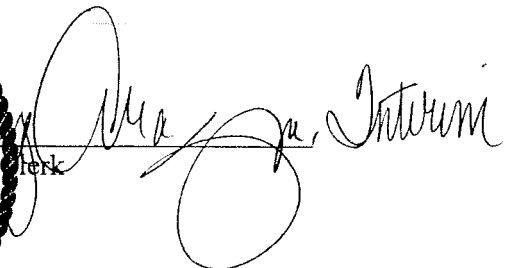
SIGNED AND EFFECTIVE THIS 16th DAY OF March, 2020, AT 9:31 A.M.

THE CITY OF GREELEY, COLORADO

TEST:

By: 
Mayor




City Clerk

Council Agenda Summary

June 15, 2021

Key Staff Contact: Anissa Hollingshead, City Clerk's Office, 970-350-9742

Title:

Consideration of a resolution adopting amendments to City Council's Policies and Protocol

Summary:

Greeley's Home Rule Charter §3-3 provides that the Council shall determine its own rules of procedure. Accordingly, City Council adopted, by Resolution, a compilation of rules of procedure which has been amended from time to time. The compilation includes Council's roles and responsibilities provided for in the Charter and Code, as well as general practices agreed upon since the initial 1992 adoption.

City Council reviewed its Policies and Protocol at the March 23, 2021, Work session. Subsequently, work has also continued on developing options for conducting hybrid meetings of the Council for which some of the discussed changes are required. Additional changes were also agreed upon that include general changes of a minor nature and other housekeeping updates needed to ensure the policies and protocol document matches the Council's preferences and actual practices. These changes were all provided to Council as part of the March 23 Work session, with the addition of specific hybrid meeting language developed based on guidance from the Council at that session, as well as making the addition requested by Council to Section 11.7 (i) for the order of conduct for quasi-judicial proceedings.

A full detailing of the proposed changes based on that discussion is attached to this staff report and in summary include:

<i>Changes relating to hybrid meetings</i>	
Section 8.4 Electronic Participation (pp. 21-23)	<i>Amending language in part a. (5) to adjust requirement for roll call votes to be upon request to match actual practices, and adding a new part b. to allow participation both within a physical meeting room and via a virtual component for council members, staff, presenters, and the public.</i>
Section 9.2 Councilmembers (pp. 24-25)	<i>Adding language allowing council members to choose to participate in regular Council meetings or work sessions via a virtual platform when hybrid meetings are available.</i>
Section 11.1 Quorum (page 26)	<i>Adding language clarifying electronic participation in a meeting constitutes being present for all meeting purposes, including establishing quorum.</i>
<i>Other minor general changes</i>	
Section 11.7 (f)- (j) Order of Business	<i>Amending language:</i>

(pp. 29-30)	• in part f to allow comment on anything not already designated as a public hearing or comment period on the agenda during the public input period; • in part g to change the verbiage used from petitions to initiatives; • in part h to remove the language allowing anyone in the meeting audience to remove something from the consent agenda; • in part i to add a staff rebuttal period to the order of process for a quasi-judicial hearing and to add a separate order of process for legislative items; and • in part j to add resolutions to the types of items that may be found on the New Business portion of the agenda.
Section 8.1 Meetings of Council Defined (page 19)	Adding serial emails to the definition of meetings of Council for clarity and to stay in line with state statute, and updating the code citation for the 2021 Greeley Municipal Code.
Section 11.2 (b) Rules of Order (page 26)	Amending the language to change to adopting the most recent version of Robert's Rules of Order to govern the Council's proceedings.
Section 12.1 (d) Council Chambers (page 31)	Amending language to be clear smoking is prohibited in any meeting space.
Housekeeping changes	
Section 4.6 Code of Conduct (d) (ii) (page 10)	Adding language to reflect the addition of the Deputy City Manager role.
Section 6.2 Communication & Correspondence (pp. 16-18)	Amending language in parts a, c, d and e to reflect responsibilities between the City Manager's Office and the City Clerk's Office.
Section 10.1 Agenda Procedures (page 25)	Amending language to reflect responsibilities between the City Manager's Office and the City Clerk's Office.
Section 14.2 (c) and (d) Citizen Boards and Commissions- Application and Appointment (pp. 34-35)	Amending language to add clarity and bring into alignment with practices currently followed, and consolidating language about term limits.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	N/A
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

None.

Other Issues and Considerations:

None.

Strategic Work Program Item or Applicable Council Priority and Goal:

The work done by the Clerk to Council program of the City Clerk's Office operates with the goal of supporting, informing, and recording the work of the City Council and making information about that work accessible to the public. This goal ties directly to the Council's identified strategic outcomes of *Good Governance* and *Accessible & Connected Community*.

Decision Options:

- 1) Adopt the resolution as presented; or
- 2) Amend the resolution and adopt as amended; or
- 3) Deny the resolution; or
- 4) Continue consideration of the resolution to a date certain.

Council's Recommended Action:

A motion to adopt the Resolution.

Attachments:

Draft Resolution

Council's Policies and Protocol-markup version (Exhibit A to the resolution)

Summary of Changes to Council Policies and Protocol

**CITY OF GREELEY, COLORADO
RESOLUTION NO. _____, 2021**

**A RESOLUTION ADOPTING AMENDMENTS TO CITY COUNCIL'S POLICIES AND
PROTOCOL**

WHEREAS, §3-3 of the Greeley City Charter provides that City Council shall determine its own rules of procedure; and

WHEREAS, City Council adopted a compilation of rules and procedure in 1992 which has been amended from time to time, with the last amendment in May, 2020 to make minor updates; and

WHEREAS, the *Policies and Protocol* provides for amendment of the rules by resolution; and

WHEREAS, a review was conducted with the City Council on March 23, 2021, and there was interest in changes relating to enabling hybrid meetings in Sections 8.4 Electronic Participation, 9.2 Councilmembers, and 11.1 Quorum; order of business clarifications in Section 11.7 Order of Business; minor updates to Sections 8.1 Meetings of Council Defined, 11.2 Rules of Order, and 12.1 Council Chambers; and minor housekeeping changes in Sections 4.6 Code of Conduct, 6.2 Communication & Correspondence, 10.1 Agenda Procedures, and 14.2 Citizen Boards and Commissions.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. Sections 4.6, 6.2, 8.1, 8.4, 9.2, 10.1, 11.1, 11.2, 11.7, 12.1, and 14.2 of the City Council *Policies and Protocol* are amended to read as shown in Exhibit A.

Section 2. This Resolution shall become effective immediately following its passage.

PASSED AND ADOPTED, SIGNED AND APPROVED this ____ day of ____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

City Council

Policies & Protocol

2021 Proposed Changes



City of Greeley, Colorado

VISION STATEMENT

Greeley promotes a healthy, diverse economy and high quality of life responsive to all its residents and neighborhoods, thoughtfully managing its human and natural resources in a manner that creates and sustains a safe, unique, vibrant and rewarding community in which to live, work and play.

Adopted: Resolution No. 05, 1992 (02/18/1992)
Amended: Resolution No. 11, 1992 (05/05/1992)
Resolution No. 14, 1992 (06/02/1992)
Resolution No. 03, 1996 (01/16/1996)
Resolution No. 54, 2002 (10/01/2002)
Resolution No. 52, 2003 (08/19/2003)
Resolution No. 43, 2004 (08/03/2004)
Resolution No. 21, 2005 (05/17/2005)

Resolution No. 42, 2005 (09/06/2005)
Resolution No. 06, 2007 (02/20/2007)
Resolution No. 06, 2010 (01/05/2010)
Resolution No. 09, 2011 (02/15/2011)
Resolution No. 03, 2012 (01/17/2012)
Resolution No. 21, 2013 (04/16/2013)
Resolution No. 15, 2016 (02/16/2016)
Resolution No. 85, 2017 (10/17/2017)
Resolution No. 12, 2020 (03/17/2020)
Resolution No. 22, 2020 (05/19/2020)

Greeley City Clerk's Office • 1000 10th Street • Greeley, Colorado 80631 • (970) 350-9740

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1.1 Charter

Authority and Purpose

Section 3-3 of the Charter of the City of Greeley provides that the Council shall determine its own rules of procedure. Upon adoption by the Council, the following set of rules shall be in effect until such time as they are amended or new rules adopted in the manner provided by these rules.

1.2 Purpose

This document is intended as a general guide to various legislative activities and compiles policies relative to the actions of the Greeley City Council.

2

2.1 Suspension

Suspension & Amendment of these Rules

Any provision of these rules not governed by the Greeley City Charter, Greeley City Code, or Federal or State law, may be temporarily suspended by a vote of a majority of Council.

2.2 Amendment

These rules may be amended or new rules adopted, by a majority vote of all members of the Council by Resolution.

3

3.1 Mayor

Roles, Responsibilities & Time Commitment

a. Recognized as head of the City Government for all ceremonial purposes. [Charter § 3-2(a)]

b. Preside over meetings of the City Council. [Charter § 3-2(a)]

c. Has same speaking and voting rights as any other member. [Charter § 3-2(a)]

d. Shall in no case have the power to veto. [Charter § 3-2(a)]

e. Executes and authenticates legal instruments requiring signature. [Charter § 3-2 (a)]

f. Shall be the conservator of peace, and in emergencies may exercise within the City the powers conferred by the Governor of the State of Colorado for purposes of military law, and shall have the authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder. [Charter § 3-2(b)]

g. Designate a written emergency succession order for the remaining Councilmembers. [Charter § 3-2(b)]

- h. Leads the Council into an effective, cohesive working team.
- i. Appoints standing Council committees and Council liaisons to other boards or committees.
- j. Serves as the Council's primary point of contact for the City Manager.
- k. Meet with the City Manager at least weekly.

3.2 Mayor Pro Tem

Performs the duties of the Mayor if the Mayor is absent or disabled. [Charter § 3-2(a)]

3.3 All Members of Council

a. Inspire public confidence in Greeley's City government.

b. All members of the City Council, including the Mayor and Mayor Pro-Tem, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect.

c. City Council as a whole is the corporate authority of the City of Greeley. (Charter § 3-1)

d. City Council has the power of legislative authority as provided by law. (Charter § 3-1)

The fiscal and service impact, including enforcement, of new legislation should be carefully considered.

e. City Council shall appoint, and have the power to remove, a City Manager, City Attorney, and Municipal Judge and conduct a periodic performance review. (Charter § 4-1, § 4-3, § 6-1, § 7-1)

f. Appoint or designate an Interim City Manager during the period of a vacancy or prolonged absence of the City Manager. (Charter § 4-1)

g. No member of Council shall be appointed City Manager during the term for which the member of Council shall have been elected nor within one year after the expiration of the member's term. (Charter § 4-1)

h. Provide advice and consent to the City Manager for the appointment, or removal, of a City Clerk and a Director of Finance. (Charter § 3-9, § 5-1)

Confer with the City Manager, as requested by the City Manager, on the appointment or removal of other senior management staff.

i. Appoint advisory board and commission members and review each group every three years. (Charter § 2-8)

- j. Have the authority, in order of the emergency succession order designated by the Mayor, to suppress riot and disorder, and may exercise all powers conferred by the Governor of the State for purposes of military law. [(Charter § 3-2(b))]
- k. As provided by Charter, the Council shall be the judge of the election and qualifications of its own members. (Charter § 3-3)
- l. Adopt an annual budget and make appropriations by ordinance. (Charter § 5-15)
- m. Annually set a tax levy to be certified to the County Commissioners. (Charter § 5-14)
- n. Authorize debt as provided by law. (Charter, Part IV of Article V)
- o. Council shall determine its own rules of procedures. (Charter § 3-3)
- p. Council may compel the attendance of absent members in such manner and under such penalties as the Council may provide. (Charter § 3-3)
- q. Council shall approve the minimum and maximum schedule of compensation for boards, commissions, and all employees of the City. (Charter § 3-4)
- r. The Council, or a duly authorized committee thereof, may investigate any agency and the official acts of any officer or employee thereof, and may compel by subpoena, attendance and testimony of witnesses and production of books and documents. (Charter § 3-4)
- s. The Council shall provide for enforcement of its ordinances. (Charter § 3-4)
- t. Powers expressly withheld from Council: Except for the purpose of inquiry, the Council and members of its committees, shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager either publicly or privately. (Charter § 3-4)
- u. City Council may enter into agreements, contracts and leases with governmental and private entities according to policy established for such purpose. (Charter § 3-5)
- v. City Council shall provide for an annual financial audit of the municipal government. (Charter § 3-8)
- w. Be prepared to invest at least twenty to thirty hours per week in meetings, events and activities as an elected official.
- x. Review Council protocols and procedures at least annually.

y. Participate in an annual retreat to review the City's vision and formulate goals and objectives.

z. Represent the City at ceremonial functions at the request of the Mayor.

aa. Meet individually with the City Manager as desired.

3.4 Time Commitment

Councilmembers may expect to invest an estimated twenty to thirty or more hours per week in their role as an elected official in communicating with members of the community, meeting preparation including extensive review of various reports, and meeting attendance.

1. Additional time would be typical for the Mayor, Mayor Pro Tem, and Councilmembers serving as City representatives on regional, state or national commissions or committees.
2. The usual meeting schedule includes a weekly meeting of the Council; one or two sessions monthly with the City Manager; one monthly session with the County Commissioners and/or other governmental agencies; and periodic sessions to interview candidates for appointive boards/commissions.

4

Code of Ethics

4.1 Purpose

The proper operation of democratic government requires that actions of public officials be impartial; that government decisions and policies be made in the proper channels of government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a Code of Ethics is adopted to establish guidelines for ethical standards of conduct by setting forth those acts or actions that are incompatible with the best interests of the City, and by directing disclosure of private financial or other interests in matters affecting the City of Greeley.

4.2 Definitions

a. Anything of Value - Such as money, property, favor, service, payment, advance, forbearance, loan, guarantee of loan, or promise of future employment. Does not include the solicitation, acceptance or receipt of political campaign contributions regulated by law, or hospitality extended for a purpose related to city business by a person, or items of nominal value such as souvenir type items and also meals, lodging, travel expenses, or tickets to sporting, recreational, educational, or cultural events.

Code of Ethics & Code of Conduct

b. Confidential Information - All information, whether transmitted orally or in writing, which is of such a nature that it is not, at that time, a matter of public record or public knowledge.

c. Person - Any business, individual, union, committee, club, other organization, or group of individuals.

d. Public Official - For purposes of this section, public official shall include the Mayor, members of Council, and members of any board, commission, authority, or committee.

4.3 Ethics Code

Public Officials shall:

a. Strive to protect and enhance the reputation of the City of Greeley.

b. Treat all persons equally with courtesy and impartiality, and refrain from granting special advantage to any person beyond what is available to all citizens.

c. Avoid real or potential conflicts between private and public duties, remembering that the public interest must be the principal concern.

d. Keep undisclosed all confidential information acquired by reason of one's position which may be used for personal or financial gain, consistent with the public's right of access to public information.

e. Refrain from securing special privileges or exemptions for one's self or any other persons that are not available to all citizens.

f. Avoid receiving, soliciting or otherwise obtaining anything of value from any person which is intended to influence or reward the performance of official duties.

g. Avoid exceeding one's authority or asking for special consideration or asking other persons to do so.

4.4 Disclosure

Public officials shall declare to the appropriate authority the nature and extent of any financial or personal interest in a City contract or other legislation as provided in Section 11.6 of these Rules (Conflicts of Interest), or 4.20 (Purchasing) of the Greeley Code of Ordinances, report gifts and honoraria as may be required by state law, and any other applicable disclosure laws.

Code of Conduct

4.5 Purpose

Greeley's governance relies on the cooperative efforts of elected officials, city staff and many other members of the City and the broader community. There are a variety of

complex issues involved in running a City organization, pressures of huge workloads, and decisions made that impact the lives of thousands of community members. As a result, issues can often become contentious. Despite these pressures, elected officials are called upon to exhibit appropriate conduct at all times and demonstrate respect for every individual through their words and actions. This Code of Conduct describes the manner in which Councilmembers should treat one another, city staff, constituents, and others they come into contact with in representing the City of Greeley.

4.6 Code of Conduct

a. **Council conduct with one another in public meetings:**

- i. **The Use of formal titles.** The Council may choose to refer to one another formally during the beginning of Council meetings as Mayor, Mayor Pro Tem, or Councilmember followed by the individual's last name to acquaint the audience with the meeting participants. Then, addressing one another informally is encouraged to create for the audience a more welcoming tone.
- ii. **Practice civility, professionalism and decorum in discussions and debate.** Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. Be respectful of diverse opinions.
- iii. **Honor the role of the Mayor in maintaining order and equity.** Respect the Mayor's efforts to focus discussion on the agenda item under consideration. Objections to the presiding officer's actions should be voiced politely and with reason, following parliamentary procedures.
- iv. **Demonstrate effective problem-solving approaches.** Councilmembers have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. Councilmembers are role models for residents, business people and other stakeholders involved in public debate.
- v. **Be respectful of other people's time.** It is important to be punctual and that the meetings start on time. Stay focused and act efficiently during public meetings.

b. **Council conduct with one another in private encounters:**

- i. **Continue respectful behavior in private.** The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

- ii. **Be aware that even private conversations can have a public presence.** Elected officials are always on display; their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

c. **Council conduct with other public agencies.**

- i. **Be clear about representation when attending other agency meetings or events.**

- 1) If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state whether the Councilmember's statement reflects personal opinion or is the official stance of the City, and if appropriate, whether it is the majority or minority opinion of the Council.
- 2) If the Councilmember is representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint.
- 3) If the Councilmember is representing another organization whose position is different from the City, the Councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- ii. **Correspondence also should be equally clear about representation.**

- 1) City letterhead may be used when the Councilmember is representing the City and the City's official position, and the City Manager's Office will prepare, transmit, and retain the correspondence as part of the public record. Note cards will be made available to Councilmembers for use in transmitting individual expressions of gratitude, congratulations, etc.
- 2) City letterhead should not be used for correspondence of Councilmembers representing a personal point of view, or a

dissenting point of view from an official Council position.

d. Council Conduct with City Staff:

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- i. **Treat all staff as professionals.** Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with Council colleagues, practice civility and decorum in all interactions with City staff.
- ii. **Channel communications through the appropriate senior City staff.** Questions and requests for information should be directed only to the City Manager, **Deputy City Managers**, Assistant City Manager, City Attorney, Municipal Judge, or Department Heads. The City Manager should be copied on or informed of any request to Department Heads. When in doubt about what staff contact is appropriate, Councilmembers should ask the City Manager for direction.
- iii. **Respect the City Manager's work program.** Councilmembers are encouraged to continually share ideas, suggestions, and feedback. The time and resources needed to develop and implement these ideas and suggestions, however, can sometimes compete with the time and financial resources needed to fulfill Council's established goals and priorities. To assist in balancing these competing requests, Councilmembers should consider handling petitions, generally categorized, as follows:
 - 1) Routine requests for action or information made directly to staff.
 - a) For routine requests for action (i.e. reports of property nuisance or safety concerns), Councilmembers should depend on staff to respond by contacting the City Manager's Office with information about the request. This type of request can be forwarded to the City Manager at any time rather than waiting for a formal referral at a Council meeting. The same protocol outlined in Section 6.2 of these policies, regarding communication and correspondence, can

be utilized and will help ensure a timely response.

- b) Routine requests for information or reports that may take less than an hour for staff to fulfill should be made directly to the appropriate department head or to the City Manager.

2) Significant requests requiring Council consensus.

- a) Requests for additional information or reports that may take more than one hour to fulfill should be presented as a formal petition at a Council meeting so the information project, or modification of current reporting practices, can be considered by the Council as a whole and agreed upon as something that merits an investment of staff time.
- b) Policy or program modifications. Requests to research and analyze the viability of new or modified legislation, policies, or programming should be presented as a formal petition at a Council meeting so the matters can be considered by the Council as a whole and agreed upon as something that merits an investment of staff time.

iv. **Refrain from soliciting political support from staff.**

Refrain from soliciting any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from city staff at work. Staff certainly may, as any other citizen, support political candidates away from the workplace. The City will distribute campaign literature to City employees at work if it arrives by mail and includes the employee's department/division in the mailing address. The City as an employer, however, prefers that personal mail for employees, including campaign material, be sent to their home address.

v. **Never publicly criticize an individual employee.**

Criticism is differentiated from questioning facts or the opinion of staff. All critical comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney or Municipal Judge should be made directly to these executives through private correspondence or conversation.

- vi. **Do not get involved in administrative functions.** Avoid any staff interactions that may be construed as trying to shape staff recommendations. Councilmembers shall refrain from coercing staff in making recommendations to the Council as a whole.
- vii. **Do not attend staff meetings unless requested by staff.** Even if the Councilmember does not say anything, the Councilmember's presence may imply support, show partiality, intimidate staff, or hamper staff's ability to do its job objectively.
- viii. **All Councilmembers should have the same information with which to make decisions.** Council may expect that staff will make every attempt to provide each member of Council with the same information (i.e. requests made of staff for information will be distributed to all; correspondence to one Councilmember will be distributed to all).

e. Council Conduct with Boards and Commissions.

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- i. **Maintain an active liaison relationship.** Appointed Council liaisons are encouraged to attend all regularly scheduled meetings of their assigned Board or Commission.
- ii. **Attending board meetings, generally.** Councilmembers may certainly attend any board or commission meeting, which is open to any member of the public. Remember, however, that a Councilmember's presence can affect the conduct of the meeting and limit the board's role and function.
 - 1) Any comments made at a meeting of a board for which the Councilmember is not an appointed liaison should be identified as the Councilmember's personal views or opinions and not the official position of the Council.
 - 2) Since the attendance of 3 or more Councilmembers constitutes a legal Council meeting, Councilmembers should advise staff of their planned attendance so appropriate and timely public notification can be prepared and posted.

- iii. **Limit contact with Board and Commission members to questions of clarification.** It is inappropriate for a Councilmember to contact a Board or Commission member to lobby on behalf of an individual, business, or developer, or to advocate a particular policy perspective. To clarify a position taken by a board, Councilmembers should contact staff.
- iv. **Boards are advisory to the Council as a whole.** The Council as a whole, and not individually, appoints individuals to serve on boards and any removal of a board member is also Council's responsibility as a group. Appointments should be based solely on established diversity goals and membership parameters. An appointment should not be used as a political "reward."
- v. **Be respectful of diverse opinions.** A primary role of the City's boards is to represent many points of view in the community and to provide Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of all residents serving on boards.
- vi. **Keep political support away from public forums.** Board members may offer political support to a Councilmember but only in a forum outside the official duties of the board. Conversely, Councilmembers may support board members who are running for office but not in an official forum in their capacity as a Councilmember.
- vii. **Concerns about an individual Board or Commission member should be pursued with tact.** Inappropriate behavior by a board member should be noted to the City Manager or designee, and the Manager or designee should counsel the board member. If the behavior continues, the Manager should forward the matter to Council for consideration of removal from the Board, pursuant to Section 2-8 of the Greeley Charter.

f. Council conduct with the public.

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Councilmembers toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- i. In public meetings:

- 1) **Be welcoming and respectful to speakers.**

Addressing Council at public forums can be a

daunting experience even for the most seasoned speaker. Some issues for which Council will make a decision may affect people's daily lives and their homes. Some decisions are emotional. The way in which a speaker is treated can do a lot to help them relax and convey a message, and not elevate emotions to a higher level of intensity.

- 2) **Be fair and equitable in allocating public hearing time.** The Mayor will determine and announce limits on speakers at the start of the meeting or public hearing. Generally, each speaker will be allocated three minutes; applicants and appellants or their designated representatives will be allocated more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit information to new information and points of view not already covered by previous speakers. No speaker should be turned away unless the speaker exhibits inappropriate behavior. Each speaker may only speak once during a hearing unless Council requests additional information or clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.
- 3) **Listen actively.** Being attentive and making eye contact will make speakers feel they are being heard. Be aware of facial expressions that could be interpreted as "smirking," disbelief, anger or boredom.
- 4) **Ask for clarification; avoid debate and arguments.** Questions from Council to speakers should seek to clarify or expand information. Avoid challenging or criticizing speakers. If a speaker is off the topic or exhibits behavior or language that is disturbing, the Mayor should interrupt, focus the speaker, and maintain the order and decorum of the meeting.

ii. In unofficial settings:

- 1) **Make no promises on behalf of the Council.** Councilmembers will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, plant new flowers in the median, etc.)

- 2) **Make no personal comments about other Councilmembers.** It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Councilmembers, their opinions and actions.
- 3) **Remember that despite its impressive population figures, Greeley is a small town at heart.** Councilmembers are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Greeley. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Councilmembers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

5

Common Practices & Expectations

5.1 Purpose

The purpose of this chapter is to enhance the administration of City Council business activities by documenting accepted practices and clarifying expectations. Although it cannot integrate all practices and expectations that may exist, a summary of some of the most prominent ones are being listed.

5.2 Election Methods

With the goal of encouraging the greatest possible voter participation in City elections, the methods of election preferred are (1) coordinating the City election with Weld County whenever possible, and if not possible, (2) conducting the election independently by mail.

5.3 Performance Evaluations

a. Personnel reporting directly to City Council: Annual performance assessments should be completed by March 1.

b. Council self-assessment: Council may conduct a self-assessment as desired.

5.4 Council Orientation

An orientation for newly elected members of Council will be provided and participation is anticipated. An orientation for Mayoral and Council candidates also will be provided.

5.5 Annual Report to the Community

A report to the community, regarding accomplishments and plans of the community's local government, is to be furnished each year. The anniversary of Greeley's incorporation, April 6, is an appropriate time to deliver the report to the community.

6

Communication & Correspondence

6.1 Communication Tools

To enhance communications with the public and City staff, cellular phones, computers, and supporting services may be provided to the Mayor and Members of Council during their term of office.

a. Cellular telephones and supporting cellular service may be provided, if desired, to the Mayor and Members of Council within the City Council program budget and agreed upon by Council. A total of \$40.00 per month will be reimbursed for cellular telephone service for each member of Council.

b. A City-purchased computer and/or supporting internet provider service, if desired, may be provided to the Mayor and Members of Council within the City Council program budget and agreed upon by Council. A total of \$50.00 per month will be reimbursed for internet service for each member of Council.

c. While City staff will maintain computer applications related to City affairs, staff cannot provide assistance for personal computer applications.

6.2 Communication & Correspondence

The City of Greeley invites and encourages members of the community to participate in local government affairs and help shape local decisions. One way to participate is direct communication with Councilmembers through telephone calls, postal and electronic mail, and addressing elected and appointed officials at public meetings.

An established practice will help ensure that Council/constituent communications receive timely acknowledgement and response from staff, appropriate distribution, and proper disclosure and retention according to the State's open records law and the City's records retention requirements. An additional benefit of the protocol is to make certain the City Manager is aware of the issues of interest to the community and any emerging trends or problem areas.

a. Protocol. Depend on staff to respond to citizen requests for action and other communications whether Council receives the information by telephone call, by letter, electronic mail, or through conversation in an informal setting or in a public meeting. Councilmembers may either:

- i. Provide the City **Manager's Clerk's** Office contact information to the individual, or
- ii. Take a name, contact information and nature of the communication and forward the information to the City **Manager's Clerk's** Office for response.

b. Staff Response. The City Manager will forward the communication to the appropriate department, the department is expected to respond to the request and report back to the Manager's Office as well as notify the requestor

that the investigation has been completed and if action has already been or will be taken to remedy the concern. The Manager's Office will notify the Councilmember of the results so as to inform the Councilmember of the response status.

- i. The City Manager may utilize communication tracking systems to assist in managing this function.
- ii. Generally, staff's response will be in the same format as the communication received unless otherwise requested or deemed appropriate (i.e. a request for action received via e-mail likely would receive an e-mail response).
- iii. Anonymous correspondence or other communication will not be addressed unless staff determines the issue is compelling enough to be processed (i.e. a major health or safety matter).

c. Correspondence received via postal mail at City offices.

The City **Manager's Clerk's** Office will be responsible for managing the correspondence received through the mail for City Council. Unless a different process is provided or required by law, staff will open the correspondence (unless it is marked personal or confidential), confer with Council, and provide a response. Responses will be signed by the Councilmember to whom the correspondence was addressed, and the Mayor will sign those addressed to Council as a whole.

d. Citizen Input at Council Meetings. A sign-up sheet will be available at meetings to record contact information. Most often, a speaker's questions can be answered at the meeting. If more information is needed in order to provide a response, the City **Manager's Clerk's** Office will contact the speaker as soon as possible after the meeting. If a speaker's expectations are unclear, the Mayor or Manager should ask the speaker to clarify the speaker's desired outcome for the request made.

e. Electronic mail (email) management. Email is simply mail in an electronic format. Mail received or sent, in any format, contains a variety of information, or *content*, and each email should be managed in a way that is appropriate for its content. Treat each email as if it were received in a paper format through the mail. Council's email likely will fall into two general categories:

- i. *Transitory email* – For most users, most email messages fall within this category. These temporary messages are retained only until the material has been read and is no longer useful. It is general documentation of extremely short-term value, including drafts and worksheets, desk notes, copies of materials circulated for informational "read only" purposes, and other records with preliminary or short-term informational

value. Some are even considered “non-records” such as advertisements, catalogs, bulletins, what is commonly referred to as “junk” mail, etc. The email should be deleted as soon as it is read or no longer useful.

- ii. *Email having lasting value* – An email with lasting value is to be retained according to the City's *Records Retention Schedule*, and the retention period varies according to the informational content of the message. The content of this type of e-mail usually can be characterized as either (a) correspondence, or (b) policy issues. Councilmembers are encouraged to forward these emails to the City **Manager's Clerk's** Office for appropriate response (to correspondence) and retention (correspondence has a minimum retention of one year; some policy matters carry a permanent retention period). After the email has been forwarded to the City **Manager's Clerk's** Office, the email should be deleted from the Councilmember's computer.

7

Compensation, Travel & Special Events

7.1 Compensation

a. Council shall receive compensation as provided by ordinance.

b. During their term, the Mayor and Members of Council are authorized to participate at their own expense in any fringe benefit program available to City employees.

c. Council shall review its compensation at least once every four (4) years, to begin after May 12, 2004.

7.2 Travel - Purpose

Recognizing that it is in the interest of constituents for Councilmembers to attend various meetings, especially meetings of the National League of Cities and the Colorado Municipal League, for the purpose of learning about current issues affecting local government and to gain information that will be useful in making policy decisions, the City Council establishes the following guidelines for Councilmember educational and city government relevant travel.

7.3 Travel - Guidelines

a. Expenses will be reimbursed in accordance with the schedule established for city employees. If a Councilmember's spouse or a guest accompanies the Councilmember to a conference, event registration for the spouse or guest shall be reimbursed.

b. Each Councilmember shall be reimbursed for attendance at the CML Annual Conference.

7.4 Special Events

- c. Each Councilmember shall be reimbursed for attendance at no more than one of the two NLC conferences each year.
- d. Attendance at other conferences or educational programs out-of-state shall be reimbursed only as a substitute for NLC, for example, National Civic League.
- e. Attendance at out-of-state meetings, seminars, workshops, etc., on a specific topic or to represent the city shall be authorized by the Council and will generally be limited to one member for such meeting or workshop.
- f. Council may allow one member to serve on an NLC committee and reimburse expenses for two additional meetings per year.
- g. As the budget allows, attendance at in-state meetings related to city business shall be reimbursed.

It is often desirable to have City representation, or to show City support for community functions/events. The charge to attend these events may vary and reimbursement will be made to Councilmembers based on the general guidelines provided in Section 7.3 of these Rules and within the City Council program budget.

- a. The City government is directly involved as a sponsor or participant.
- b. The event is sponsored by another public agency and having city representative(s) is important.
- c. The event is sponsored by a community organization which the City is a member or which the City provides financial support and City representation is important.
- d. Reimbursement for spouse/companion would be authorized in the event the Mayor or designated attendee was attending an event as the official City representative.

8

Meetings of Council

8.1 Defined

A meeting is defined as any kind of gathering, including telephone calls and serial emails, of three (3) or more members of City Council, held to discuss public business. (Code Chapter 2.04 Section 2-150)

8.2 Meeting Types

a. Council Meetings. Meetings of the City Council are sessions held to consider public business and take formal action.

- i. The Council shall meet in regular session on the first and third Tuesdays of each month in Council

Chambers in City Center South at 1001 11th Avenue, and beginning at 6:00 p.m. By motion, the Council may, from time to time, alter the foregoing schedule.

- ii. The Council may meet in special session, scheduled no sooner than twenty-four (24) hours from the time it is called, to consider items of business that require the immediate or special attention of the City Council. The special session shall be called by either motion at a regular meeting, or by the Mayor and any three (3) members of the City Council, as evidenced by signatures on a notice and call of special meeting, and a notice to all members of the City Council, personally served or left at his or her usual place of residence, by telephone or by electronic transmission by the City Clerk.

b. Work sessions. Work sessions of the City Council are sessions held to consider public business and take no formal action except:

- i. A motion to conduct an executive session in conjunction with the work session; or
- ii. A motion to call a special City Council meeting for the sole purpose of conducting an executive session.

The regular work sessions of the City Council shall be held on the second and fourth Tuesdays of each month in the Council's Chambers in City Center South at 1001 11th Avenue, and beginning at 6:00 p.m. By motion, the City Council may from time to time alter the foregoing schedule. Special work sessions may be scheduled in the same manner as provided for special Council meetings.

c. Town meetings. Town meetings of the City Council are work sessions held throughout the City within each of the wards, generally on an annual basis, to provide an informal setting for community discussions.

d. Adjourned Meetings. If at a regular or special meeting, Council is unable to complete its work, an adjourned meeting can be scheduled for a later time to take up its work at the point where it was interrupted, provided that no adjournment shall be for a longer period than until the next regular meeting. No meeting will be adjourned during a public hearing; however, a public hearing may be continued.

e. Executive Sessions. The Council may, upon the affirmative vote of two-thirds (2/3) of the quorum present, hold an executive session for the purpose of discussing matters allowed by law.

f. Emergency Meetings. Attempts will be made to follow Section 10.2 (Notice of Meetings) for meetings of Council held

to handle matters of a natural disaster. Contrary to Section 11.1 (Quorum), a majority of the members will not be necessary to conduct the business related to a natural disaster meeting. However, actions taken at the emergency meeting shall be considered for ratification at a regular City Council meeting.

8.3 Meetings to be Public

All official meetings of the Council, except Executive Sessions, shall be open to the public and the media, freely subject to recording by radio, television, and photographic devices at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings. Members of the public shall have a reasonable opportunity to be heard under such rules and regulations as the Council may prescribe.

8.4 Electronic Participation

a. Emergency Situations. In the event a quorum is unable to meet at the day, hour, and place fixed by these rules because meeting in-person is not practical or prudent due to a public health pandemic or unforeseen emergency affecting the City, meetings may be conducted by telephone, electronically, or by other means of communication so as to provide maximum practical notice and participation. Meetings may be held by telephone, electronically, or by other means of communication subject to the following conditions:

1. The City Manager or the Mayor determines that meeting in person is not practical or prudent, because of a public health pandemic or other unforeseen emergency affecting the City;
2. All members of the City Council can hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation;
3. Members of the public are given the opportunity to hear or read all discussion, testimony and votes, in a manner designed to provide maximum notice and participation unless not feasible due to the public health pandemic or emergency;
4. At least one member of the City Council is present at the regular meeting location, unless not feasible due to the pandemic or emergency circumstances;
5. All votes on the adoption of ordinances or resolutions are conducted by roll call; other votes are may be conducted by roll call at the request of any Councilmember or executive staff for clarity;

6. Minutes of the meeting are taken and promptly recorded, and such records are open to public inspection; and
7. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, the fact that some or all members of the City Council may participate by telephone, electronically, or by other means and the right of the public to monitor the meeting from another location.

- b. **Hybrid meetings.** Meetings of the City Council, including work sessions, may include a virtual component in order to allow for hybrid participation in the meeting room and via remote participation by Councilmembers, staff, presenters, and the public.

The preference and expectation of Councilmembers is to attend Council meetings in person when possible. When in-person attendance is not possible, remote attendance is preferable to not permitting participation or delaying the conduct of public business. Participation by remote attendance shall comply with this section and any applicable laws.

1. Remote attendance means participation by video or audio means, such as a webinar platform, which is clear, uninterrupted and allows two-way participation;
2. Councilmembers may participate in a meeting by remote attendance when travelling, due to health considerations, or when unusual or unforeseen circumstances do not allow in person attendance but the Councilmember still wishes and is able to be part of the meeting. Councilmembers who are ill but still able to participate in proceedings are encouraged to participate by remote attendance;
3. At least one Councilmember is present at the regular meeting location, and the meeting location is fully accessible to the public;
4. The technology used for hybrid meeting participation must allow for Councilmembers participating electronically to be heard in the meeting room, and the activities in the meeting room to be heard by anyone participating electronically;
5. A Councilmember who is participating in a meeting via remote attendance shall (a) be entitled to participate in all Council matters in the

same capacity as a Council member in a physical attendance; (b) be counted for purposes of establishing quorum; (c) have the opportunity to express comments during the meeting and participate in the same capacity as those members physically present, subject to all general meeting guidelines and adopted procedures; (d) shall be heard, considered, and counted as to any vote taken; and (e) be subject to the requirement of Charter § 3-14 that every member when present must vote and have such member's vote taken and recorded by the City Clerk and placed in the Council proceedings;

6. All votes on the adoption of ordinances are conducted by roll call; other votes may be conducted by roll call at the request of any Councilmember or executive staff;
7. The Mayor, Mayor-Pro Tem or other presiding officer shall have the discretion to mute anyone participating through remote attendance when distracting and extraneous noise is occurring through that remote attendance. The presiding officer may delegate the authority to mute remote participants to the meeting host controlling the meeting platform. The presiding officer shall use best efforts to recognize and provide opportunity for Councilmembers participating via remote attendance to contribute to the discussion and express comments, as well as for members of the public participating through remote attendance to provide public comments during portions of the meeting open to public participation;
8. To the extent possible, full and timely notice is given to the public setting forth the time and location of the meeting, the fact that some members of City Council may participate electronically, and the right of the public to view or participate in the meeting either at the meeting location or via an electronic platform; and
9. During meetings allowing public participation subject to these policies and protocol, members of the public can participate from the meeting room or electronically via a virtual platform.

9

Meeting Participants

9.1 Presiding Officer

a. Mayor. The Mayor shall preside over meetings of the City Council and have the same right to speak and vote therein

as any other member. The Mayor shall in no case have the power of veto. (Charter § 3-2)

Duties of the presiding officer include:

(1) Open the meeting at the appointed time, and call the meeting to order.

(2) Announce the business coming before the Council in accordance with the prescribed order of business, or direct the City Clerk to introduce items of business by reading the title of each agenda item.

(3) Recognize members who are entitled to the floor and ensure that ample opportunity is extended to express the opinions of constituents.

(4) State and put to a vote all questions that legitimately come before the council, and announce the results of each vote. Although not prohibited, the presiding officer generally does not propose a motion.

(5) Enforce the Council's rules relating to debate, order, and decorum at meetings.

(6) Expedite business in every way compatible with the rights of members.

(7) Decide all questions of order.

(8) Declare the meeting adjourned.

b. Mayor Pro Tem. The City Council within its membership shall elect, at its first meeting following its election, a Mayor Pro Tem who shall become acting Mayor with the same duties as provided for the Mayor in the case of absence or disability. (Charter § 3-2)

c. Temporary Chair. In case of the absence or disability of the Mayor and Mayor Pro Tem, the City Clerk shall call the Council to order and call the roll of members. If a quorum is found to be present, Council shall proceed to elect, by a majority vote of those present, a Temporary Chair to serve as presiding officer of the meeting until the arrival of the Mayor or Mayor Pro Tem at which time the Temporary Chair shall relinquish the chair upon conclusion of the business immediately before the Council.

9.2 Councilmembers

All members of Council have the right to full participation in all meetings.

Councilmembers are expected to attend all regularly scheduled Council meetings and Work sessions. In case of emergency, e.g. illness, Councilmembers should notify the City Manager, City Clerk or Mayor in advance of the meeting if at all possible. Members detained but expecting to attend should, whenever possible, notify the Mayor or City Clerk which can be done by calling the City Manager, the City Clerk, or the Police front desk, as appropriate.

In accordance with section 8.4, a member may also elect to participate in a regular Council meeting or work session through a virtual mechanism when hybrid meetings are

available. Remote participation in a hybrid meeting constitutes being present at that meeting. Councilmembers should notify the Mayor or City Clerk of their intent to participate remotely in any meeting offering hybrid participation options.

Councilmembers who wish to be excused from a regular meeting should make this request as early as possible but no later than the regular meeting preceding the anticipated absence. This will assist in scheduling important items to obtain the participation and vote of all Councilmembers.

Councilmembers are expected to be in their seats one minute before meeting start time for microphone checks. Any Councilmember participating in a meeting through a virtual platform should log into the online portion of the meeting at least five minutes prior to the meeting start time in order to ensure their connection is in place.

For personal security reasons, out-of-town trips will not be announced publicly in advance of or return from travel.

9.3 Executive Staff

a. City Manager. The City Manager, or the City Manager's designee, shall attend all meetings of the Council unless excused, and shall have the right to take part in all discussions of the Council, but shall have no vote.

b. City Attorney. As Council's legal representative, the City Attorney or the City Attorney's assistant shall attend all meetings of the Council unless excused, and shall have the right to take part in all discussions of the Council, but shall have no vote. Upon request, the City Attorney shall provide either a written or oral opinion on questions of law. The City Attorney shall act as Council's parliamentarian.

9.4 City Clerk

The City Clerk, or the City Clerk's designee, shall attend all meetings of the Council unless excused, and shall keep the official journal of proceedings and perform such other duties as may be requested by the Council.

9.5 Other Municipal Officials and Employees

The head of any department, or any officer or employee of the City, as directed by the City Manager, shall attend meetings of the Council.

10

Agenda and Notice of Meetings

10.1 Agenda Procedures

Prior to each meeting of Council, the City ~~Manager~~Clerk shall distribute to each Councilmember:

a. A copy of the agenda of the meeting, stating therein each matter to be discussed or debated by the Council by title, description and/or synopsis.

10.2 Notice of Meetings

b. A copy, in its latest form or edition, of each ordinance, resolution, or other written or printed document to be presented at the meeting, including background information, analysis and recommendation to City Council when applicable.

c. A copy of the minutes of the previous meeting.

a. Method of Notification. The agenda of meetings, as meetings are defined in Section 8-1, shall be posted at least twenty-four (24) hours prior to the meeting. Any other notice allowable by law shall be permissible. In addition, a reasonable effort will be made to notify the media normally covering the City Council meeting when the decision is made to call the meeting.

b. Posting Locations. Notice of a Council meeting shall be posted on the City Council website: (<http://greeleygov.com/government/council>). The posting location shall be designated annually at the first regular City Council meeting of each calendar year. Notices also may be posted at other appropriate locations.

11

Meeting Procedures

11.1 Quorum

A majority of the members of the entire Council shall constitute a quorum and be necessary for the transaction of business. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time. **Electronic participation subject to the requirements of either 8.4 (a) for emergency meetings or 8.4 (b) as part of a hybrid meeting constitutes being present for all meeting purposes, including establishing quorum.** The only action Council may take in the absence of a quorum is the motion to adjourn.

11.2 Rules of Order

a. Purpose. The primary purpose for use of parliamentary procedure is to protect the rights and privileges of those deliberating, and to assure that the minority is protected while facilitating the will of the majority.

b. Reference. The **most recent edition of "Robert's Rules of Order Newly Revised"** shall govern the proceedings of the Council in all cases, unless they are in conflict with these rules, the Greeley Code of Ordinances, or the Greeley Charter.

11.3 Preservation of Order

The presiding officer shall preserve order and decorum; prevent attacks on personalities or the impugning of members' motives, and confine members in debate to the questions under discussion.

11.4 Debate

a. Each member of Council has a right to speak on every debatable motion before it is acted on.

b. When recognized by the presiding officer, a Councilmember shall confine remarks to the matter or question then under discussion.

c. A Councilmember shall speak only once on the question until all other members of Council who wish to speak have had the opportunity to do so.

11.5 Voting

a. Required. The ayes and nays shall be taken upon the passage of all ordinances, resolutions, and motions and entered upon the journal of the Council proceedings. Every member, when present, must vote unless excused by majority vote of the Council. (Charter § 3-14)

b. Voting Methods. A vote by voice shall generally be used, and a show of hands may be requested by Council or Executive Staff for verification.

A roll call vote may be requested by any member of Council. It shall not be in order for members to explain their vote during roll call.

c. Tie Vote. In the case of a tie in votes on any item or motion, the action shall be defeated. Council may reconsider the item or motion if, at the same meeting the tie vote occurred, a majority of Council votes to reconsider.

11.6 Conflicts of Interest

Upon determining that a Councilmember has a personal or private interest, potential conflict, or appearance of conflict, in a matter proposed or pending before the Council, the member shall request to speak when the agenda item with which the member has a conflict is called, and either:

a. disclose that there may be a personal or private interest, potential conflict, or appearance of conflict, in the matter and will not participate in the discussion or decision; and step down from the Council platform and leave the Chambers during the Council's discussion and action; or

b. request legal advice from the City Attorney.

NOTE: When possible the Councilmember should discuss the potential conflict before the meeting with the City Attorney.

11.7 Order of Business

a. Call to Order. The presiding officer opens the meeting by calling it to order, and may announce, "This (date) (regular or special) meeting of the Greeley City Council will come to order."

b. Opening Ceremonies. The presiding officer, or other individual or group approved by the presiding officer, may

lead in the recitation of the Pledge of Allegiance to the American Flag.

c. Roll Call. After the opening ceremonies, the roll is called to verify member attendance and enter the names of those attending in the minutes to substantiate that the Council has complied with quorum requirements for holding a meeting. The presiding officer directs the City Clerk to call the roll, and may then announce the presence of a quorum.

d. Approval of Agenda. The City Manager will review the agenda, calling attention to any additions, deletions or corrections that may be necessary. Unless a majority objects, the order of business may be amended or suspended at any meeting.

e. Presentations. Proclamations, special citations, and awards are presented. With regard to proclamations:

- (1) City Council believes it to be in the best interests of the City to limit the issuance of proclamations to persons, community events and activities that are non-controversial in nature, so that the City is not perceived as taking positions on issues or causes that are the subject of significant differences of opinion within the community.
- (2) Proclamations are to be utilized exclusively for ceremonial and recognition purposes, and should promote the cultural, social, economic or intellectual welfare of the community.
- (3) Proclamations may be requested by any individual or organization, or by the Mayor or individual members of the City Council.
- (4) Proclamations should concern persons, events or activities of local interest that are non-controversial in nature. If the Mayor believes that a particular person, event or activity may be deemed controversial or not of local interest by the majority of Council, the Mayor shall consult with the Mayor Pro Tem and the City Manager to determine whether to issue the proclamation and shall notify the City Council of the decision. Any such decision may be overridden by a majority of the City Council.
- (5) Whenever possible, proclamations should be accepted by a local representative.
- (6) Proclamations will be presented to the appropriate representative, who may be provided an opportunity to make brief comments.
- (7) Upon request, the Mayor or members of the City Council may present proclamations outside of a City Council meeting, at special events or activities or other designated locations.

f. Input from members of the public. Members of the public may address the Council on any subject not already listed for public hearing or public comment on the agenda by securing the permission of the presiding officer. A total of 15 minutes may be spent on Input from members of the public and individual speakers may be limited to three (3) minutes or other time based on the meeting's agenda. Persons who have notified the City Manager's Clerk's Office, in advance of the meeting, of their desire to speak will be recognized by the presiding officer without further action and at the outset.

g. Reports and Petitions/Initiatives.

(1) Oral or written reports to Council may be made by Councilmembers, Executive Staff, other administrative officers, or Board or Commission members. The Council may:

(i) Receive the report, which means merely that the report was given. No motion is required.

(ii) Implement the recommendations of the report. A motion is made, and requires a second, to accept or reject only the recommendations of the committee, rather than the entire report.

(iii) Adopt or accept the entire report. An affirmative vote on this motion has the effect of endorsing the entire report, including all facts and explanations.

(iv) Defer the report to a subsequent meeting.

(2) Petitions/Initiatives. Any Councilmember may bring before the Council any business that the member feels may be deliberated upon by the Council. These matters need not be specifically listed on the Agenda, but formal action on such matters shall be deferred until a subsequent Council meeting.

h. Consent Agenda. The Consent Agenda is intended to allow the City Council to expedite those items that are of a routine nature and not controversial. The Consent Agenda is provided as a convenience and time savings to the citizens attending the Council meeting.

Councilmembers or anyone in the meeting audience may request an item on the Consent Agenda be "pulled" and considered separately under "Pulled Consent Agenda Items" in the order they were listed.

Examples of items typically included on the Consent Agenda:

(1) Approval of City Council proceedings (reading of the minutes shall be dispensed with unless requested by a Councilmember).

(2) Reports on Council Work sessions, Committees, and Boards.

(3) Introduction of Ordinances.

(4) Resolutions.

(5) Replats, vacations, dedications.

(6) Contracts.

The City Clerk shall read each item on the Consent Agenda and its recommended action into the record. The Consent Agenda, after removal of any items, shall thereupon be adopted as a unit.

i. Public Hearings, Final Reading of Ordinances. Public hearings shall proceed as follows:

FOR QUASI-JUDICIAL MATTERS:

- (1) City Staff presentation
 - description and analysis
 - recommendation
 - subject to Council questions
- (2) Applicant or Petitioner presentation
 - subject to Council questions
- (3) Public presentation
 - subject to Council questions
 - Council may limit time of speakers
- (4) Applicant or Petitioner rebuttal, if requested
 - Council may limit time of speakers
- (5) Staff response, if requested
 - subject to Council questions
- (6) Public discussion closed
- (7) Council discussion
- (8) Council decision

FOR LEGISLATIVE MATTERS (except as otherwise provided by law):

- (1) City Staff presentation (if requested)
 - description and analysis
 - recommendation
- (2) Council questions of staff
- (3) Public input
- (4) Council discussion
- (5) Council decision

j. New Business. Includes items in which no substantive action has yet been taken by Council; such as ordinance introductions, resolutions, appointments to various boards and commissions, scheduling of meetings.

k. Adjournment. Upon no further business, the Presiding Officer may simply declare the meeting adjourned.

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12.1 Council Chambers

General Rules

a. Supervision. The Council Chambers shall be under the supervision and control of the City Clerk when Council is not in session, and may take whatever actions necessary to protect

the public health, welfare, and peace, and allow for the orderly conducting of the meeting.

The Council Chambers shall be used solely for the transaction of public business of the City; or as authorized within the intent of Council policy on the use of the Council Chambers.

b. Sergeant-at-arms. The Chief of Police, or qualified representative, shall maintain the peace in the Council Chambers.

c. Seating Arrangement. Members shall occupy the respective seats in the Council Chambers assigned to them by the Mayor.

d. Smoking. Smoking shall be prohibited in the Council Chambers or the work session room any designated meeting space.

12.2 Excusal During Meeting

Councilmembers may be excused from the remaining Council Meeting with permission from the presiding officer.

12.3 Recess

The presiding officer may call a recess not to exceed twenty (20) minutes at any time during a meeting to determine a rule of order, or at the request of a majority of Council. The presiding officer may call a recess at any time between items of business.

12.4 Journal of Proceedings

An account of all proceedings of the Council meetings shall be kept by the City Clerk and shall be entered in a book constituting the official record of the Council.

a. The minutes for Council meetings should be primarily a record of the action taken at a meeting, not what was said by members of the Council. The minutes shall contain a separate paragraph for each subject matter and, at a minimum, reflect each subject or item considered and the language of and disposition of each motion, resolution, ordinance, or matter on which action is taken. With respect to annexation and zoning hearings, considerably more detail may be needed.

b. The minutes for Council work sessions should be primarily a record, in summary, of the discussion and any direction provided.

c. The record for executive sessions shall be as provided by ordinance.

d. Although not required for other sessions at which Council is present, a report may be prepared that lists the topics of conversation.

The minutes may be corrected or amended after they have been approved, if an error or material omission is reasonably

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established. In this case, the motion "to amend something previously adopted" may be used.

Ordinances, Resolutions & Motions

The hierarchy of actions taken by Council include: (1) Ordinances, (2) Resolutions, and (3) Motions.

13.1 Ordinances

An Ordinance is the most authoritative form of action the Council can take. An adopted ordinance becomes an established rule or law of the City and remains in effect until otherwise rescinded or amended by the Council.

Every ordinance shall require the affirmative vote of the majority of the membership of the entire Council for final passage. (Charter § 3-14)

The form, need, and procedure for enactment are set forth in the Greeley Charter, Article III.

13.2 Resolutions

Resolutions are acts of a relatively permanent nature and remain in effect until rescinded or amended by Council.

Generally, resolutions implement or carry out the terms of an ordinance, provide a statement of policy, or express Council's opinion on a public matter.

Resolutions shall be introduced in written form and may be adopted by a majority of a quorum of the Council upon a single reading. Resolutions need not be published, but shall be kept on public file.

13.3 Motions

a. Defined. A motion refers to a formal proposal by a Councilmember that the Council may take action upon. Motions are generally introduced by voice. However, if long or involved, motions should be in writing and, in any event, any two members of Council may ask that a motion be put in writing.

b. Classes.

(1) MAIN motions introduce items of business before Council. A main motion can be made only when no other motion is pending, and it ranks lowest in the order of precedence of motions.

(2) SUBSIDIARY motions are secondary or supplemental to the main motion and must be dealt with before the main motion can be voted on. This motion class includes those to:

- Postpone indefinitely
- Amend

- Refer to a committee
- Postpone to a certain time
- Limit or extend limits of debate
- Previous question
- Lay on the table

(3) PRIVILEGED motions are those of a more administrative function and do not relate directly to the pending question, such as:

- Call for the orders of the day
- Raise a question of privilege
- Recess
- Adjourn
- Fix the time to which to adjourn

(4) INCIDENTAL motions have no connection with the main motion, but are important enough for immediate consideration and temporarily sets aside the main motion. Examples:

- Point of order
- Appeal
- Suspend the rules
- Objection to the consideration of the question
- Division of a question
- Consideration by paragraph or section
- Division of a question
- Consideration by paragraph or section
- Division of the assembly
- Motions relating to methods of voting and the polls
- Motions relating to nominations
- Requests and inquiries

(5) MOTIONS THAT BRING A QUESTION AGAIN BEFORE THE ASSEMBLY may be made, like main motions, while no other business is pending. Examples:

- Take from the table
- Rescind or amend something previously adopted
- Discharge a committee
- Reconsider (the vote)

c. Presentation and Disposition. Unless otherwise required, the following steps shall be taken for the presentation and disposition of motions:

- (1) A Councilmember addresses the presiding officer;
- (2) the member is recognized by the presiding officer;
- (3) the member proposes a motion;
- (4) another member seconds the motion;
- (5) the presiding officer states the motion to the entire membership;
- (6) the Council debates or discusses the motion [while debate on a main motion is under way, amendments and

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14.1 Council Committees

14.2 Citizen Boards and Commissions

- subsidiary, privileged, and incidental motions may be introduced (if they are in order), debated (if they are debatable), and disposed of];
- (7) the presiding officer restates the motion and takes the vote on the motion; and
- (8) the presiding officer announces the results of the vote.

Creation of Committees, Boards and Commissions

(Reserved)

a. Purpose. Volunteer citizen advisory groups may be established with a variety of roles and responsibilities, and provide formal and continuous citizen involvement in City government. Some groups are established to satisfy state or local law.

City Council anticipates and welcomes recommendations from advisory boards. In balancing the needs of the community, Council may not always adopt a board recommendation. It is expected that board members honor the decision made by Council and not circumvent Council's conclusions.

b. Administrative Support. Administrative support will be provided to the various Boards and Commissions by the appropriate City department.

c. Recruitment and Qualifications.

(1) General recruitment efforts shall be made to Greeley residents with special measures being taken to balance ward representation and attract minority and special population applicants.

(2) Generally, volunteers will be limited in serving on one board or commission at a time. It is at Council's discretion to appoint someone to serve on more than one board or commission at a time.

(3) The number of terms served by a citizen member, with the exception of those serving on the Water and Sewer Board, will be limited to two. With the exception of the Water and Sewer Board members, the number of terms served by a board member generally shall be limited to two so as to allow broad citizen participation. Council may consider retaining board members beyond two terms on a case-by-case basis when such a continued appointment appears to be in the best interest of the board and the City.

(4) Absence excuses may be given by the chairpersons of each board. Excessive absences of board members may also

be considered during reappointment application, and may be cause for dismissal at Council's discretion.

d. Application and Appointment.

(1) Unless otherwise stated, positions on Boards and Commissions shall be appointed by Council from applicants who have completed the appropriate application form and interview process. Greeley residents will be given appointment preference, and property owners living outside of Greeley and other non-Greeley residents may be considered on a case-by-case basis.

(2) Application forms shall be developed and made available to potential board candidates.

(3) Interview of the candidates may be conducted by an interview team consisting of two members of Council and the City's Boards & Commissions Program Coordinator/Manager (or the Coordinator/Manager's designee). Notwithstanding the above, candidates for the Water and Sewer Board and the Planning Commission will be interviewed by the Council.

(4) At the option of the interview team the chair or chair's designee will be invited to be present at the interviews and serve as a resource for their board or commission.

(5) The interview team's recommendations for appointments will be forwarded to Council for consideration.

(6) Council appointment may be by written ballot and candidates must receive the vote of a majority of Council.

(7) Individuals appointed to fill a vacancy with an unexpired term of six months or less shall also be appointed to serve the succeeding full term.

(8) With the exception of the Water and Sewer Board members, the number of terms served by a board member generally shall be limited to two so as to allow broad citizen participation. Council may consider retaining board members beyond two terms on a case-by-case basis when such a continued appointment appears to be in the best interest of the board and the City.

e. Orientation. The citizen volunteer shall be provided the opportunity to receive an orientation and working knowledge of overall City functions and responsibilities with a specific focus on the board to which the volunteer has been appointed.

f. Council & Commission Roundtable. Dialogue between the boards and Council concerning goals and key issues is desired at least annually. In lieu of an annual roundtable, Council may utilize other methods of communications with

boards and commissions, such as a periodic newsletter or triennial review.

g. Leadership Training. Members of boards who function as officers are expected to partake in training sessions which are geared toward the development of leadership skills, which may be funded from City Council's budget, if needed.

h. Recognition/Appreciation. A program to recognize the special efforts of the City's outstanding citizen volunteers, and a standard method of recognizing the service of all citizen board members may be implemented.

i. Triennial Review. With the exception of the boards and commissions authorized by the Greeley Home Rule Charter, each City board and commission will be reviewed every three years by City Council and then authorize its continuance or sunset. In preparation for the Council review, each board and commission may complete a self-assessment and submit the group's accomplishments, goals and program plan.

Summary of Changes

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Changes relating to Hybrid Meetings

Section 8.4 Electronic Participation

Part a. 5.: changing the requirement for votes by roll call to allow for roll call at the request of any member or executive staff

This change is to better align the requirements with actual practices. The City Attorney’s Office advises roll call votes should always be conducted for adopting resolutions or ordinances when electronic participation is being used. Using roll call votes for other items can be optional.

5. All votes on the adoption of ordinances or resolutions are conducted by roll call;
other votes ~~are~~ may be conducted by roll call at the request of any Councilmember
or executive staff for clarity;

Adding a new part b. to allow for hybrid meeting participation

This language is necessary in order to allow for participation both within a physical meeting room and via a virtual component for council members, staff, presenters, and the public.

Hybrid meetings. Meetings of the City Council, including work sessions, may include a virtual component in order to allow for hybrid participation in the meeting room and via electronic participation by Councilmembers, staff, presenters, and the public. The preference and expectation of Councilmembers is to attend Council meetings in person when possible. When in-person attendance is not possible, remote attendance is preferable to not permitting participation or delaying the conduct of public business. Participation by remote attendance shall comply with this section and any applicable laws.

1. Remote attendance means participation by video or audio means, such as a webinar platform, which is clear, uninterrupted and allows two-way participation;
2. Councilmembers may participate in a meeting by remote attendance when travelling, due to health considerations, or when unusual or unforeseen circumstances do not allow in person attendance but the Councilmember still wishes and is able to be part of the meeting. Councilmembers who are ill but still able to participate in proceedings are encouraged to participate by remote attendance'
3. At least one Councilmember is present at the regular meeting location, and the meeting location is fully accessible to the public;
4. The technology used for hybrid meeting participation must allow for Councilmembers participating electronically to be heard in the meeting room, and the activities in the meeting room to be heard by anyone participating electronically;
5. A Councilmember who is participating in a meeting via remote attendance shall (a) be entitled to participate in all Council matters in the same capacity as a Council member in a physical attendance; (b) be counted for purposes of establishing quorum; (c) have the opportunity to express comments during the meeting and participate in the same capacity as those members physically present, subject to all general meeting guidelines and adopted procedures; (d) shall be heard, considered, and counted as to any vote taken; and (e) be subject to the requirement of Charter § 3-14 that every member when present must vote and have such member's vote taken and recorded by the City Clerk and placed in the Council proceedings;
6. All votes on the adoption of ordinances are conducted by roll call; other votes may be conducted by roll call at the request of any Councilmember or executive staff;
7. The Mayor, Mayor-Pro Tem or other presiding officer shall have the discretion to mute anyone participating through remote attendance when distracting and extraneous noise is occurring through that remote attendance. The presiding officer may delegate the authority to mute remote participants to the meeting host controlling the meeting platform. The presiding officer shall use best efforts to recognize and provide opportunity for Councilmembers participating via remote attendance to contribute to the discussion and express comments, as well as for members of the

public participating through remote attendance to provide public comments during portions of the meeting open to public participation;

8. To the extent possible, full and timely notice is given to the public setting forth the time and location of the meeting, the fact that some members of City Council may participate electronically, and the right of the public to view or participate in the meeting either at the meeting location or via an electronic platform; and
9. During meetings allowing public participation subject to these policies and protocol, members of the public can participate from the meeting room or electronically via a virtual platform.

Section 9.2 Councilmembers

Adding language allowing remote participation by council members during hybrid meetings

This language clarifies that council members may choose to participate in a regular Council meeting or work session via a virtual platform when hybrid meetings are available.

Councilmembers are expected to attend all regularly scheduled Council meetings and Work sessions. In case of emergency, e.g. illness, Councilmembers should notify the City Manager, City Clerk or Mayor in advance of the meeting if at all possible. Members detained but expecting to attend should, whenever possible, notify the Mayor or City Clerk which can be done by calling the City Manager, the City Clerk, or the Police front desk, as appropriate. In accordance with section 8.4, a member may also elect to participate in a regular Council meeting or work session electronically through a virtual mechanism when hybrid meetings are available. Electronic participation in a hybrid meeting constitutes being present at that meeting. Councilmembers should notify the Mayor or City Clerk of their intent to participate electronically in any meeting offering hybrid participation options.

Councilmembers who wish to be excused from a regular meeting should make this request as early as possible but no later than the regular meeting preceding the anticipated absence. This will assist in scheduling important items to obtain the participation and vote of all Councilmembers.

Councilmembers are expected to be in their seats one minute before meeting start time for microphone checks. Any Councilmember participating in a meeting through a virtual platform should log into the online portion of the meeting at least five minutes prior to the meeting start time in order to ensure their connection is in place.

Section 11.1 Quorum

Adding language clarifying electronic participation constitutes being present

This language clarifies that council members participating in a regular Council meeting or work session via a virtual platform or any telephonic or electronic means as part of an emergency or hybrid meeting are considered present and are part of the meeting quorum.

A majority of the members of the entire Council shall constitute a quorum and be necessary for the transaction of business. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time. Electronic participation subject to the requirements of either 8.4 (a) for emergency meetings or 8.4 (b) as part of a hybrid meeting constitutes being present for all meeting purposes, including establishing

quorum. The only action Council may take in the absence of a quorum is the motion to adjourn.

Other General Changes

Order of Business clarifications

Section 11.7 Order of Business

Part f.: Input from members of the public: shifting what the public can comment on, and updating a reference from City Manager's Office to City Clerk's Office

The shift to allow comment on anything not already designated as a public hearing or comment period on the agenda allows the public the ability to state their thoughts on other agenda as well prior to the Council taking action, while the updated reference to the Clerk's Office for signing up to speak is a housekeeping change to align with actual practice.

- f. Input from members of the public.** Members of the public may address the Council on any subject not already listed for public hearing or public comment on the agenda by securing the permission of the presiding officer. A total of 15 minutes may be spent on Input from members of the public and individual speakers may be limited to three (3) minutes or other time based on the meeting's agenda. Persons who have notified the City ~~Manager's~~Clerk's Office, in advance of the meeting, of their desire to speak will be recognized by the presiding officer without further action and at the outset.

Part g: change reference from petitions to initiatives

This change matches the verbiage typically used on agendas and in meetings.

g. Reports and ~~Petitions~~Initiatives.

- (2) ~~Petitions~~Initiatives. Any Councilmember may bring before the Council any business that the member feels may be deliberated upon by the Council. These matters need not be specifically listed on the Agenda, but formal action on such matters shall be deferred until a subsequent Council meeting.

Part h.: changing who can request an item be pulled off the consent agenda

This change brings the protocols more in alignment with actual meeting practice, and makes clear that only council members and staff may request an item be pulled from the consent agenda.

- h. Consent Agenda.** The Consent Agenda is intended to allow the City Council to expedite those items that are of a routine nature and not controversial. The Consent Agenda is provided as a convenience and time savings to the citizens attending the Council meeting.
Councilmembers ~~or anyone in the meeting audience~~ may request an item on the Consent Agenda be "pulled" and considered separately under "Pulled Consent Agenda Items" in the order they were listed.

Part i.: adding an additional step to quasi-judicial matters and an order of handling for legislative items

These additions:

- 1) Add a new step 5 to the order of handling for quasi-judicial matters:

FOR QUASI-JUDICIAL MATTERS:

- (1) City Staff presentation
 - description and analysis
 - recommendation
 - subject to Council questions

- (2) Applicant or Petitioner presentation
 - subject to Council questions
- (3) Public presentation
 - subject to Council questions
 - Council may limit time of speakers
- (4) Applicant or Petitioner rebuttal, if requested
 - Council may limit time of speakers
- (5) Staff response, if requested
 - subject to Council questions
- (6) Public discussion closed
- (7) Council discussion
- (8) Council decision

- 2) Clarifies the different format in public hearings followed based upon whether an item is legislative in nature or is a quasi-judicial matter:

FOR LEGISLATIVE MATTERS:

- (1) City Staff presentation (if requested)
 - description and analysis
 - recommendation
- (2) Council questions of staff
- (3) Public input
- (4) Council discussion
- (5) Council decision

Part j.: adds resolutions to type of items found under new business on a Council agenda

Adding resolutions to the list of items that can be found on the New Business portion of the agenda, to make clear this type of item may appear on the consent agenda or as new business.

- j. New Business.** Includes items in which no substantive action has yet been taken by Council; such as ordinance introductions, resolutions, appointments to various boards and commissions, scheduling of meetings.

Minor Updates

Section 8.1 Meetings of Council Defined

Housekeeping change to add serial emails to the meeting definition to stay in line with state statute.

A meeting is defined as any kind of gathering, including telephone calls and serial emails, of three (3) or more members of City Council, held to discuss public business.
(Code Chapter 2.04)

Section 11.2 Rules of Order

Part b.: updating the version of Robert's Rules of Order to the latest edition

This is largely a housekeeping change, to keep the Council working from the most current version of Robert's Rules.

- b. Reference.** The most recent edition of "Roberts Rules of Order Newly Revised" shall govern the proceedings of the Council in all cases, unless they are in conflict with these rules, the Greeley Code of Ordinances, or the Greeley Charter.

Section 12.1 Council Chambers

Part d.: clarifying smoking is prohibited in any meeting space

- d. Smoking.** Smoking shall be prohibited in the Council Chambers or ~~the work session room~~ any designated meeting space.

Housekeeping Changes

Adding Deputy City Manager Role to references

Section 4.6 Code of Conduct

Part d. ii.: adding deputy city managers to list of senior City staff

This is a housekeeping change to reflect the change in title for the prior assistant city manager roles to deputy city managers, while retaining what is now the assistant city manager role.

- i. **Channel communications through the appropriate senior City staff.** Questions and requests for information should be directed only to the City Manager, Deputy City Managers, Assistant City Manager, City Attorney, Municipal Judge, or Department Heads. The City Manager should be copied on or informed of any request to Department Heads. When in doubt about what staff contact is appropriate, Councilmembers should ask the City Manager for direction.

Updating some references from City Manager's Office to City Clerk's Office

Section 6.2 Communication & Correspondence

Parts a. & c.-e.: updating some references to City Manager's Office to City Clerk's Office

This is a housekeeping change to align the language with the practices followed in managing most Council correspondence.

- a. **Protocol.** Depend on staff to respond to citizen requests for action and other communications whether Council receives the information by telephone call, by letter, electronic mail, or through conversation in an informal setting or in a public meeting. Councilmembers may either:
 - i. Provide the City ~~Manager's~~Clerk's Office contact information to the individual, or
 - ii. Take a name, contact information and nature of the communication and forward the information to the City ~~Manager's~~Clerk's Office for response.
- c. **Correspondence received via postal mail at City offices.** The City ~~Manager's~~Clerk's Office will be responsible for managing the correspondence received through the mail for City Council. Unless a different process is provided or required by law, staff will open the correspondence (unless it is marked personal or confidential), confer with Council, and provide a response. Responses will be signed by the Councilmember to whom the correspondence was addressed, and the Mayor will sign those addressed to Council as a whole.
- d. **Citizen Input at Council Meetings.** A sign-up sheet will be available at meetings to record contact information. Most often, a speaker's questions can be answered at the meeting. If more information is needed in order to provide a response, the City ~~Manager's~~Clerk's Office will contact the speaker as soon as possible after the meeting. If a speaker's expectations are unclear, the Mayor or Manager should ask the speaker to clarify the speaker's desired outcome for the request made.
- e. **Electronic mail (email) management.** Email is simply mail in an electronic format. Mail received or sent, in any format, contains a variety of information, or content, and each email should be managed in a way that is appropriate for its content. Treat each email as if it were received in a paper format through the mail. Council's email likely will fall into two general categories:
 - ii. Email having lasting value – An email with lasting value is to be retained according to the City's Records Retention Schedule, and the retention period varies according to the informational content of the message. The content of this type of e-mail usually can be characterized as either (a) correspondence, or (b)

policy issues. Councilmembers are encouraged to forward these emails to the City ~~Manager's~~Clerk's Office for appropriate response (to correspondence) and retention (correspondence has a minimum retention of one year; some policy matters carry a permanent retention period). After the email has been forwarded to the City ~~Manager's~~Clerk's Office, the email should be deleted from the Councilmember's computer.

Section 10.1 Agenda Procedures

This is a housekeeping change to align the language with the practices followed in agenda distribution.

Prior to each meeting of Council, the City ~~Manager~~Clerk shall distribute to each Councilmember:

Boards and Commissions

Section 14.2 Citizen Boards and Commissions

Parts c. and d.:

The minor updates in this section are to add clarity and bring the language into alignment with the practices currently being followed at Council's direction. Language about term limits is being consolidated so it appears with all recruitment and qualification information, and is not duplicated again in the application and appointment section.

c. Recruitment and Qualifications

- (2) Generally, volunteers will be limited in serving on one board or commission at a time. It is at Council's discretion to appoint someone to serve on more than one board or commission at a time.
- (3) ~~The number of terms served by a citizen member, with the exception of those serving on the Water and Sewer Board, will be limited to two.~~ With the exception of the Water and Sewer Board members, the number of terms served by a board member generally shall be limited to two so as to allow broad citizen participation. Council may consider retaining board members beyond two terms on a case-by-case basis when such a continued appointment appears to be in the best interest of the board and the City.

d. Application and Appointment

- (8) ~~With the exception of the Water and Sewer Board members, the number of terms served by a board member generally shall be limited to two so as to allow broad citizen participation. Council may consider retaining board members beyond two terms on a case-by-case basis when such a continued appointment appears to be in the best interest of the board and the City.~~

Council Agenda Summary

Key Staff Contact: Brad Mueller, Community Development Director, 970-350-9786

Mike Garrott, Planning Manager, 970-350-9784

Title:

Introduction and first reading of an ordinance changing the official zoning map of the City of Greeley, Colorado, from PUD (Planned Unit Development - Promontory Preliminary PUD) to PUD (Planned Unit Development - Promontory Preliminary PUD, Areas F, L & M, 2nd Amendment) zoning for approximately 99.233 acres, located east of Promontory Parkway, south of 16th Street and north of future 20th Street

Summary:

The City of Greeley is considering a request by Promontory Investments, LLC on behalf of Weldco Investors LLC for a Preliminary PUD amendment. The applicant is proposing to add all R-L (Residential Low Density) uses to Area F and to relocate the required city park location from Area F to within Areas L and M. The proposed uses are found in the attached Planning Commission Summary.

The existing PUD allows for the following uses:

Area F: To be dedicated to the City for parks, open space, and the extension of the park and lake within Area E, Fire Station and Schools.

Area M: Single family dwellings, multi-family dwellings, two family dwellings, townhouse dwellings, as well as the following uses, not to exceed 15% of the acreage contained within each Planning area: banks, savings and loan, financial institutions, ATM's, drive-up windows, medical and dental offices and clinics, hotel, motel, office, recreation uses – community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional), restaurants, retail sales not to exceed 40,000 square feet, fire stations, schools, recreation uses.

The subject site is located east of Promontory Parkway, south of 16th Street and north of future 20th Street.

The Planning Commission considered this request on May 25, 2021 and recommended approval by a vote of 4-0.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	

Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

Consideration of this matter is a quasi-judicial process.

Other Issues and Considerations:

None noted.

Strategic Work Program Item or Applicable Council Priority and Goal:

Consistency with Comprehensive Plan and Development Code standards.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for July 6, 2021.

Attachments:

Ordinance

Vicinity Map

Planning Commission Summary (Staff Report) (May 25, 2021)

Planning Commission Minutes-Draft (May 25, 2021)

**CITY OF GREELEY, COLORADO
ORDINANCE NO. _____, 2021
CASE NO. ZON2021-0006**

**INTRODUCTION AND FIRST READING OF AN ORDINANCE CHANGING THE OFFICIAL ZONING MAP
OF THE CITY OF GREELEY, COLORADO, FROM PUD (PLANNED UNIT DEVELOPMENT -
PROMONTORY PRELIMINARY PUD) TO PUD (PLANNED UNIT DEVELOPMENT - PROMONTORY
PRELIMINARY PUD, AREAS F, L & M, 2ND AMENDMENT) ZONING FOR APPROXIMATELY 99.233
ACRES, LOCATED EAST OF PROMONTORY PARKWAY, SOUTH OF 16TH STREET AND NORTH OF
FUTURE 20th STREET**

BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The property described in the legal description attached and marked Appendix A located in the city of Greeley is hereby changed from the zoning district referred to as Planned Unit Development - Promontory Preliminary PUD, to Planned Unit Development - Promontory Preliminary PUD, Areas F, L & M, 2nd Amendment, in the City of Greeley, County of Weld, State of Colorado.

Section 2. The boundaries of the pertinent zoning districts as shown on the official zoning map are hereby changed so as to accomplish the above-described zoning changes, and the Mayor and City Clerk are hereby authorized and directed to sign and attest an entry which shall be made on the official zoning map to reflect this change.

Section 3. This ordinance shall become effective five (5) days after its final publication as provided by the Greeley City Charter.

**PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF
_____, 2021.**

ATTEST

THE CITY OF GREELEY

City Clerk

Mayor

APPENDIX A
LEGAL DESCRIPTION

Lot 1, Promontory Imagine School, First Filing as recorded August 29, 2006 at Reception No. 3415275 of the Weld County Clerk & Recorder and Tract A, Promontory Imagine School Second Filing as recorded September 18, 2019 at Reception No. 4524406 of the Weld County Clerk & Recorder, County of Weld, State of Colorado

ZON20 Item No. 13. **Promontory Preliminary PUD,
Areas F, L and M, 2nd Amendment**



-  Subject Parcel
-  Greeley Parcels



PLANNING COMMISSION SUMMARY

ITEM: Amendment to the Promontory Preliminary PUD

FILE NUMBER: ZON2021-0006

PROJECT: Promontory Preliminary PUD, Areas F, L& M, 2nd Amendment

LOCATION: Promontory Parkway, south of 16th Street and north of future 20th Street

APPLICANT: Larry Buckendorf on behalf of Promontory Investments, LLC on and Weldco Investors LLC

CASE PLANNER: Mike Garrott AICP, Planning Manager

PLANNING COMMISSION HEARING DATE: May 25, 2021

PLANNING COMMISSION FUNCTION:

The Planning Commission shall consider the staff report, along with testimony and comments made by the applicant and the public and shall then make a recommendation to the City Council regarding the application in the form of a finding based on the review criteria in Section 24-625 (c)(3) and 24-663 (b)(1-2).

EXECUTIVE SUMMARY

The City of Greeley is considering a request by Larry Buckendorf on behalf of Promontory Investments, LLC and Weldco Investors LLC for a Preliminary PUD amendment. The applicants are proposing to add all R-L (Residential - Low Density) uses to Area F (*See Attachment D and E*) and relocate the required city park location from Area F to Areas L and M. The property consists of approximately 99.233 acres and is located east of Promontory Parkway, south of 16th Street and north of future 20th Street. (*See Attachment A – Vicinity Map*)

A. REQUEST

The applicant is requesting approval of the PUD Amendment. (*See Attachment A – Vicinity Map and Attachment B – Project Narrative*).

B. STAFF RECOMMENDATION

Approval

C. LOCATION

Abutting Zoning:

North: PUD (Planned Unit Development)

South: PUD (Planned Unit Development)

East: H-A (Holding Agricultural)

West: PUD (Planned Unit Development)

Surrounding Land Uses:

North: Single family dwellings

South: Portion of 20th Street / Future 20th Street

East: Vacant (Farm land)

West: Undeveloped, Commercial

Site Characteristics:

The site is currently undeveloped with no natural, unique, or special topography, vegetation, wildlife or other factors, which could influence development options. Perimeter landscaping has been installed along Promontory Parkway, at the intersections of Promontory Parkway and 20th Street and along 16th Street. Twentieth Street was recently constructed south of the subject site, as part of Fire Station No. 6 construction. Detached sidewalks exist along Promontory Parkway and along portions of the northside of 20th Street. The property slopes from the northwest to the south and southeast. Drainage is conveyed to an existing detention pond and storm water line (southeast corner of US Hwy 34 Bypass and Promontory Parkway).

D. BACKGROUND

The property was annexed into the City in 1985 as part of the Golden Triangle Second Annexation (File No. 2:85) and zoned PUD, which consisted of an area of approximately 1,701 acres. The intent of the concept Golden Triangle PUD was to allow for mixed-use development, including open space, residential, commercial, industrial, and recreational uses. The conceptual PUD plan shows light industrial development, business office park, and commercial uses on the southern portion of the PUD area that transitioned to various densities of residential and recreational/open space uses to the north.

In 1997, the City Council approved an amendment, which broke the Golden Triangle Concept PUD from one PUD into six PUDs (File No. PUD 11:97). The amendment was intended to streamline the PUD approval process. Under the 1976 Development Code, PUD actions required all land owners to sign off on development plans. As the largest PUD in the City at the time, 1,701 acres, this requirement was found to be cumbersome. The concept PUD was split into six smaller PUDs, with each assigned a set of allowed uses based on the concept PUD plan. The subject site is located in the Golden Triangle Concept PUD #1. In accordance with the Golden Triangle Concept PUD, PUD #1 allowed industrial uses only.

On December 1, 1998, the City Council approved an amendment to the Golden Triangle PUD, which rezoned the subject property from PUD (Golden Triangle) to PUD (Tri-Pointe), (File No.

PUD 8:98). The Tri-Pointe PUD encompassed an area of 668.72 acres. The conceptual plan as approved, allowed for a mixture of land uses, varying from residential, institutional, corporate headquarters, general commercial, and a requirement for the dedication of parks, schools, fire station location.

On March 16, 1999, the City Council approved a second amendment to the Tri-Pointe PUD (File No. PUD 3:99) which amended the PUD and formally changed the name of the PUD to Promontory. This amendment capped the amount of allowed retail to 84.54 acres, increased the residential acreage cap from 200 acres to 250 acres (a minimum of 900 dwelling units), increased the height allowance for office/business uses from 40 feet to 70 feet and 60 feet for industrial uses, and required the developer to dedicate a 10 acre park as well as a minimum of 1.5 acres for a fire station location (see Attachment D).

On December 21, 1999, the City Council approved modifications to the previous Council hearing on March 16, 1999. At this hearing, the Council approved the allowance for detached sidewalks, site and building design standards, lighting standards, and specified that parking in non-residential areas could exceed 125 percent of the required parking, added a requirement for bicycle parking, revised off-street parking regulations, required landscaping to comply with the City's Development code, and modified the requirement of signatures to submit PUD for approvals. Under the revision, each land owner would be able to sign a waiver letter, "forfeiting their rights, which would allow future PUD's be signed only by those pre-approving the PUD when they buy land. This proposal would be in lieu of application for final PUD approvals being submitted by the property owner, metro district, and 75 percent of all property owners owning 75 percent of the land within that tract or sub-tract". The final provisions added, allowed individual property owners within the individual tracks or areas to be the applicant and did not require the metropolitan district signature for land not owned by the district.

In 1999, the City of Greeley approved two metropolitan districts that serve the Promontory development, which are known as Tri-Pointe Commercial District and Tri-Pointe Residential District (MD 1:99).

On October 4, 2000, a Final Plat was approved for the Promontory Subdivision (PUD 10:99), which created ten super pad lots and numerous tracks (Reception No. 2798115). The subject site was platted as part of Lot 1, which consisted of 287.15 acres. In 2006, the site was replatted into Tract B, Promontory Imagine School, First Filing (Reception No. 3415275), which consisted 134.262 acres. Lot 1 was platted to accommodate a private charter school, which was proposed to be development within Promontory. However, the charter school has decided not to move forward with development.

In 2019, the property owner of Promontory Imagine School, First Filing dedicated 2.5 acres of land for the purpose of a fire station as part of another plat, known as Promontory Imagine School, Second Filing (PUD2019-0011). The approved plat also included, Tract A (94.231 acres), 20th Street right-of-way and the subject property, Tract B, which is 40.920 acres (see Attachment C)

Since the land dedication, the City has finished the construction a new fire station (Station No. 6), which is located directly north of the subject property.

The permitted uses currently allowed within the Tri-Pointe PUD (aka Promontory PUD), Area F include: open space, City park, *fire stations, schools, recreation uses – City Council approved on 9/17/2019*

Areas L&M allow for the following uses: single family dwellings, multi-family dwellings, two family dwellings, townhouse dwellings, as well as the following uses, not to exceed 15% of the acreage contained within each Planning area: banks, savings and loan, financial institutions, ATM's, drive-up windows, medical and dental offices and clinics, hotel, motel, office, recreation uses – community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional), restaurants, retail sales not to exceed 40,000 square feet, *fire stations, schools, recreation uses – City Council approved on 9/17/2019*. See Attachment D.

The applicants are proposing to add R-L (Residential - Low Density) uses and relocate the required City Park from Area F to Areas L and M. Staff is currently reviewing a proposed Preliminary PUD (Promontory Imagine School Third Filing) for a residential development, which also includes an area for the required City Park site as part of the plat (PUD2020-0014). This application will be forwarded to the Planning Commission and City Council for future considerations.

E. APPROVAL CRITERIA

Development Code Section 24-625 Rezoning Procedures

For the purpose of establishing and maintaining sound, stable and desirable development within the City, the rezoning of land is to be discouraged and allowed only under circumstances provided for in this Section [of the Code]. This policy is based on the opinion of the City Council that the City's zoning map is a result of a detailed and comprehensive appraisal of the City's present and future needs regarding land use allocation and other zoning considerations, and, as such, should not be amended unless to correct manifest errors or because of changed or changing conditions in a particular area of the City in general.

The review criteria found in Section 24-625 (c)(3) of the Development Code shall be used to evaluate the zoning amendment application.

- a) Has the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area?**

Staff Comment: Since the zoning in 1998, two major headquarters have been constructed and over 300 single family lots have been development within the Promontory development. Recently, the City of Greeley constructed Fire Station Number 6, adjacent to the subject rezoning. The subject property has remained undeveloped for over 22 years, without any land use approvals (except for replatting) requests. The

applicant has stated that the limitation of land use options has impacted the development options on the tract. As such, the applicant would like to provide more flexibility with the site, by allowing additional residential land uses and relocating the City Park within the proposed residential development (PUD2020-0014), which will be forwarded for review by the Planning Commission and City Council at future hearings.

The proposal complies with this criterion.

b) Has the existing zoning been in place for at least fifteen (15) years without substantial development resulting and does the existing zoning appear to be obsolete, given development trends?

Staff Comment: The subject site has been zoned Planned Unit Development (PUD) for over 22 years, without any development within the sites. The zoning designation does not appear to be obsolete, however, adding additional uses to the sites could help make the properties more marketable.

The proposal complies with this criterion.

c) Are there clerical or technical errors to correct?

Staff Comment: There are no clerical or technical errors to correct.

This criterion is not applicable to this request.

d) Are there detrimental environmental impacts, such as flood plains, inadequate drainage, slopes, unstable soils, etc., that may affect future development of this site and which may not have been considered during the original zoning of the property?

Staff Comment: The site does not contain any known detrimental environmental conditions.

This criterion is not applicable to this request.

e) Is the proposed rezoning necessary in order to provide land for a community related use, which was not anticipated at the time of adoption of the City's Comprehensive Plan; or have the policies of the City changed to the extent that a rezoning is warranted?

Staff Comment: The rezone would allow the relocation of a City Park, which would be platted and construed following successful future land use approvals.

The proposal complies with this criterion.

- f) What is the potential impact of the proposed rezoning upon the immediate neighborhood and the city as a whole (including potential noise and environmental impacts, visual impacts, the provision of City services such as police, fire, water, sewer, and pedestrian systems and parks and recreational facilities)?**

Staff Comment: It is not anticipated that the proposed zoning would create significant impacts on the property or adjacent land uses.

Any potential noise created by future development will be regulated by the Municipal Code. The appropriate buffering would be required to be provided, which would lessen any potential visual impacts. City services should not be impacted, since the surrounding area is already served by municipal services such as water and sewer. Police and Fire are already serving this area since it is within the City of Greeley. Any new development would need to connect to the nearby City water, non-potable water and sewer facilities.

The proposal complies with this criterion.

- g) Is there clear and convincing evidence that the proposed rezoning will be consistent with the policies and goals of the City's Comprehensive Plan and comply with the applicable zoning overlay requirements?**

Staff Comment: There are no zoning overlay requirements for the subject property. The proposal is consistent with the Imagine Greeley Comprehensive Plan and its sub-elements, specifically the Strategic Housing Plan regarding the facilitation of developing new housing communities. The proposal is supported by the following specific Imagine Greeley Comprehensive Plan goals and objectives:

Goal ED-3: Attract and maintain an employed, skilled, and adaptable workforce.

Objective ED-3.1 Diverse Workforce

Provide diverse economic opportunities, jobs, and housing and transportation options to ensure that Greeley is attractive to and inclusive of a diverse workforce.

Goal GC-1: Manage growth effectively.

Objective GC-1.3 Adequate Public Facilities

Restrict development to the Adequate Public Facilities Area (APFA) except where the developer provides the equivalent level, or cash-in-lieu at a rate determined by the City, to install infrastructure that would otherwise be provided by the City.

Goal GC-2: Promote a balanced mix and distribution of land uses.

Objective GC-2.2 Jobs/Housing Balance

Support zoning and development patterns that expand opportunities for people who live in Greeley to also work in Greeley (or vice versa).

Goal GC-3: Promote new development, infrastructure investments, and public improvements that enhance the character of the community.

Objective GC-3.4 Tree City

Reinforce the community's image as a "Tree City" by promoting the establishment and maintenance of tree-lined travel corridors throughout the community, taking into consideration water use, conservation strategies, and the natural environment.

Goal GC-6: Maintain and enhance the character and inter-connectivity of Greeley's neighborhoods.

Objective GC-6.2 Neighborhood Connectivity

Promote design standards and practices that improve connectivity for all modes between neighborhoods and adjacent neighborhoods, centers, corridors, and areas.

Goal HO-2: Encourage a broad diversity of housing options.

Objective HO-2.1 Diversity in New Development

Encourage a variety of housing types, sizes, styles, and price-points of housing units within new residential projects or subdivisions. Ensure that Greeley has neighborhoods and/or development sites available and attractive to its desired workforce, including higher-end housing for executives and other high-paid workers.

Goal NR-1: Protect, conserve, maintain, and improve the quality and quantity of water available to Greeley.

Objective NR-1.4 Non-Potable Water

Assertively promote the use of non-potable water for irrigation as a viable and efficient alternative to treated water.

Goal NR-3: Demonstrate stewardship of the environment.

Objective NR-3.7 Urban Forest

Protect, maintain, and expand the urban forest within and around the city.

Goal TM-1: Develop and maintain an accessible, integrated, safe, and efficient transportation system.

Objective TM-1.2 Pedestrian Movements

Ensure pedestrian movement and accessibility is considered in the design and construction of all public and private development projects. Ample and safe sidewalks and other pedestrian pathways within and between developments should be provided.

Goal TM-3: Ensure that land use and transportation decisions, strategies, and investments are coordinated and complementary.

Objective TM-3.2 Supportive Development

Ensure that all proposed development projects demonstrate the ability to accommodate pedestrian and bicycle travel.

The proposal complies with this criterion.

h) What is the potential impact of the proposed rezoning upon an approved Zoning Suitability Plan for the property?

Staff Summary: There is no approved Zoning Suitability Plan for this property. The provided Zoning Suitability Map shows that the property can be development in accordance with the Development Code.

The proposal complies with this criterion.

Standards for PUD establishment: In reaching recommendations and decisions as to rezoning land to the PUD district, the Planning Commission and the City Council shall apply the following standards in addition to the standards and procedures of Section 24-625 applicable to the rezoning of land:

1. Area Requirements

The area of a proposed PUD shall be of substantial size to permit its design and development as a cohesive unit fulfilling the stated purpose of these regulations and to establish the PUD as a meaningful part of the larger community.

Staff Comment: The site contains 99.23 acres; Section 24-663 (b)(1) of the Greeley Development Code limits consideration for PUD establishment to a minimum of two (2) acres in size.

The proposal complies with this criterion.

2. Is the proposed Preliminary/Concept PUD Consistent with the Land Use Chapter of the Comprehensive Plan

A PUD proposal shall be found to be consistent with all applicable elements of the Land Use Chapter of the City's adopted Comprehensive Plan with respect to its proposed internal design and use, its relationship to adjacent areas, and the City as a whole before it may be zoned as a PUD.

The following City of Greeley Imagine Greeley Comprehensive Plan policies apply to this request.

Staff Comment: The proposal is consistent with the Imagine Greeley Comprehensive Plan and its sub-elements, specifically the Strategic Housing Plan regarding the facilitation of developing new housing communities. The proposal is supported by the following specific Imagine Greeley Comprehensive Plan goals and objectives:

Goal ED-3: Attract and maintain an employed, skilled, and adaptable workforce.

Objective ED-3.1 Diverse Workforce

Provide diverse economic opportunities, jobs, and housing and transportation options to ensure that Greeley is attractive to and inclusive of a diverse workforce.

Goal GC-1: Manage growth effectively.

Objective GC-1.3 Adequate Public Facilities

Restrict development to the Adequate Public Facilities Area (APFA) except where the developer provides the equivalent level, or cash-in-lieu at a rate determined by the City, to install infrastructure that would otherwise be provided by the City.

Goal GC-2: Promote a balanced mix and distribution of land uses.

Objective GC-2.2 Jobs/Housing Balance

Support zoning and development patterns that expand opportunities for people who live in Greeley to also work in Greeley (or vice versa).

Goal GC-3: Promote new development, infrastructure investments, and public improvements that enhance the character of the community.

Objective GC-3.4 Tree City

Reinforce the community's image as a "Tree City" by promoting the establishment and maintenance of tree-lined travel corridors throughout the community, taking into consideration water use, conservation strategies, and the natural environment.

Goal GC-6: Maintain and enhance the character and inter-connectivity of Greeley's neighborhoods.

Objective GC-6.2 Neighborhood Connectivity

Promote design standards and practices that improve connectivity for all modes between neighborhoods and adjacent neighborhoods, centers, corridors, and areas.

Goal HO-2: Encourage a broad diversity of housing options.

Objective HO-2.1 Diversity in New Development

Encourage a variety of housing types, sizes, styles, and price-points of housing units within new residential projects or subdivisions. Ensure that Greeley has

neighborhoods and/or development sites available and attractive to its desired workforce, including higher-end housing for executives and other high-paid workers.

Goal NR-1: Protect, conserve, maintain, and improve the quality and quantity of water available to Greeley.

Objective NR-1.4 Non-Potable Water

Assertively promote the use of non-potable water for irrigation as a viable and efficient alternative to treated water.

Goal NR-3: Demonstrate stewardship of the environment.

Objective NR-3.7 Urban Forest

Protect, maintain, and expand the urban forest within and around the city.

Goal TM-1: Develop and maintain an accessible, integrated, safe, and efficient transportation system.

Objective TM-1.2 Pedestrian Movements

Ensure pedestrian movement and accessibility is considered in the design and construction of all public and private development projects. Ample and safe sidewalks and other pedestrian pathways within and between developments should be provided.

Goal TM-3: Ensure that land use and transportation decisions, strategies, and investments are coordinated and complementary.

Objective TM-3.2 Supportive Development

Ensure that all proposed development projects demonstrate the ability to accommodate pedestrian and bicycle travel.

The proposal complies with this criterion.

h) What is the potential impact of the proposed rezoning upon an approved Zoning Suitability Plan for the property?

Staff Summary: There is no approved Zoning Suitability Plan for this property. The provided Zoning Suitability Map shows that the property can be development in accordance with the Development Code.

The proposal complies with this criterion.

F. PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site is part of the Promontory Imagine School Second Filing Subdivision (Tract A) which was platted on September 18, 2019 (Rec No. 4524406).

2. HAZARDS

Staff is unaware of any potential hazards that presently exist on the site.

3. WILDLIFE

The site is not located in an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

There are no concerns with drainage and/or erosion on the subject site.

6. TRANSPORTATION

Access to the subject site can be obtain from future 20th Street, adding R-L and relocated the required City Park uses should not negatively impact the area. The City will review any proposed uses, as it relates to transportation at the time of site development.

G. SERVICES

1. WATER

Water services are available in the area and can adequately serve the subject site.

2. SANITARY SEWER

Sanitation services are available in close proximity to all of the parcels within the subject site and can adequately serve the area.

3. EMERGENCY SERVICES

The subject site is within the City of Greeley's Fire Protection area, the closest fire station is Station #6, which is located adjacent to the subject site.

4. PARK/OPEN SPACES

As proposed, the applicant is requesting to relocate the required park site from Area F to within Areas M and L. The future park site located will be evaluated with the subdivision process within the Areas M and L.

5. SCHOOLS

No schools are currently located within the subject area. The properties are within the Windsor-Severance School District. The schools that currently serves the area are: Skyview Elementary, Severance Middle School and Severance High School.

6. METROPOLITAN DISTRICT

The Tri-Pointe Residential Metropolitan District serves Tract A. At this time, the properties would be accessed the normal metropolitan district tax rate, which is currently 48.79 mills.

H. NEIGHBORHOOD IMPACTS

1. VISUAL

There are no proposed site changes corresponding to the PUD amendment at this time.

2. NOISE

There are no proposed site changes corresponding to the PUD amendment at this time.

I. PUBLIC NOTICE AND COMMENT

Neighborhood notices were mailed to surrounding property owners on May 12, 2021, per Development Code requirements. Additionally, three public notice signs were posted on the subject site on May 13, 2021. Notice was published in the Greeley Tribune on May 19, 2021.

J. MINERAL ESTATE OWNER NOTIFICATION

Mineral notice is not required for a rezone request.

K. PLANNING COMMISSION RECOMMENDED MOTION

Based on the application received and the Project Summary and accompanying analysis, the Planning Commission find that the proposed amendment to the Promontory Preliminary PUD, Areas F, L & M meets the applicable Development Code criteria, Sections 24-625 (c) (3) a. b. f. g. and h. and Section 24-663 (b) 1 and 2; and therefore, recommends approval of the rezone to the City Council.

L. ATTACHMENTS

Attachment A – Vicinity Map

Attachment B – Project Narrative

Attachment C – Promontory Imagine School, Second Filing Plat

Attachment D – Tri-Point Conceptual PUD Zoning Map

Attachment E – Supplemental Use Tables – Areas F, L & M only

ZON20 Item No. 13. **Promontory Preliminary PUD,
Areas F, L and M, 2nd Amendment**



Subject Parcel



Greeley Parcels



COMMUNITY DEVELOPMENT

April 29, 2021

City of Greeley
Planning and Zoning
1100 10th Street – 2nd Floor
Greeley, CO 80631

Re: Promontory PUD, Areas F, L and M, 2nd Amendment

Dear City of Greeley Staff,

The applicant is proposing to relocate the open space/park allowable land use within Areas L and M.

If you have any questions concerning this project, please contact me at robbie@northernengineering.com or call me at 970-221-4158.

Sincerely,

NORTHERN ENGINEERING SERVICES, INC.



Robbie Lauer
Project Manager

PROMONTORY IMAGINE SCHOOL SECOND FILING

A Replat of Tract A, Tract B and Outlot A, Promontory Imagine School First Filing,
Situate in the East Half of Section 11 and West Half of Section 12, Township 5 North, Range 67 West of the 6th P.M.,
City of Greeley, County of Weld, State of Colorado

DEDICATION

TAGC Inc. being the sole owner(s) in fee of

Tract A, Tract B and Outlot A, Promontory Imagine School First Filing recorded August 28, 2006 as Reception No. 3415275 of the Records of Weld County, located in the East Half (E1/2) of Section Eleven (11) and in the West Half (W1/2) of Section Twelve (12), Township Five North (T5N), Range Sixty-seven West (R67W) of the Sixth Principal Meridian (6th P.M.), City of Greeley, County of Weld, State of Colorado.

Said described parcel of land contains 144.670 Acres, more or less (a).

shown on the attached map as embraced within the heavy exterior lines thereon, has subdivided the same into lots and blocks as shown on the attached map, and does hereby set aside said portion or tract of land and designate the same PROMONTORY IMAGINE SCHOOL SECOND FILING to the City of Greeley, Weld County, Colorado, and does dedicate to the public, the streets and all easements over and across said late locations shown on said map; and does further certify that the width of said streets, the dimensions of the lots and blocks and the names and numbers thereof are correctly designated upon said map.

Signature of Owner Paul McIntosh

Witness my hand and seal this 18th day of September, A.D. 2019

NOTARIAL CERTIFICATE

STATE OF Colorado
COUNTY OF Denver

The foregoing instrument was acknowledged before me this 18th day of September, 2019.

Richard McIntosh, President

Witness my hand and official seal.

My commission expires 2/18/21

Charles Guzman
Notary Public

(SEAL) JULIE L. GERMANO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2020400020
MY COMMISSION EXPIRES FEBRUARY 8, 2021

CERTIFICATE OF APPROVAL OF THE CITY ENGINEER TO DEVELOPMENT REVIEW AND CIVIL INSPECTIONS MANAGER

Approved this 18th day of September, 2019, by the City Engineer to Development Review and Civil Inspections Manager of the City of Greeley, Colorado.

Tina M...
City Engineer to Development Review and Civil Inspections Manager

CERTIFICATE OF APPROVAL BY THE COMMUNITY DEVELOPMENT DIRECTOR

Approved this 18th day of September, 2019, by the Community Development Director of the City of Greeley, Colorado.

Paul B. Groves
Community Development Director

SURVEYOR'S CERTIFICATE

That I, Paul B. Groves, do hereby certify that I prepared this plat from an actual and accurate survey of the land, including all existing right-of-way easements, and that the corner monuments shown thereon were properly placed under my supervision, in accordance with the regulations of the State of Colorado.



Paul B. Groves - On Behalf of King Surveyors
Colorado Licensed Professional
Land Surveyor #38209

BASIS OF BEARINGS AND LINEAL UNIT DEFINITION

Assuming the South line of Tract B, Promontory Imagine School First Filing, as bearing South 88°41'30" West, as monumented as shown on this plat, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1711.56 feet with all other bearings contained herein relative thereto.

The lineal dimensions as contained herein are based upon the "U.S. Survey Foot."

NOTICE

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 102)

TITLE COMMITMENT NOTE

This survey does not constitute a title search by King Surveyors to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of records, King Surveyors relied upon Title Commitment Number FCC25167843, dated August 13, 2019 as prepared by Land Title Guarantee Company to determine the aforesaid information.

FLOOD PLAIN NOTE

The subject property is in flood zone "X", areas determined to be outside the 0.2% annual chance of floodplain per FEMA flood map 08123C1511E and 08123C1512E both revised January 20, 2016.

CONTRAST NOTE

The entire property is in Zone PU0, Planned Unit Development.

GENERAL NOTES

1. All person who knowingly removes, alters or detaches any public land survey monument(s) or land boundary monument(s), or accessory commits a class two (2) misdemeanor pursuant to State Statute 18-6-508 CRS.
2. For all replats where lot lines or street locations change, all existing water and sewer stub-outs, fire hydrants, etc. shall be relocated to their appropriate location. Water main and sanitary sewer collection designs in this replatted area must conform to current City of Greeley design criteria.
3. A Development Agreement (Reception No. 2096810 and 3385351) has been filed in conjunction with Promontory Imagine School First Filing plat. That agreement should be viewed for additional stipulations or requirements that may encumber the property.
4. A full access point will be allowed on 20th Street West of Lot 1 in the future, see Sheet 2 of 2.



VICINITY MAP
SCALE: 1"=2000'

OWNER: TAGC, INC.
4221 BRIGH TON BLVD
DENVER, CO 80216

APPLICANT: CITY OF GREELEY
1000 10TH STREET
GREELEY, CO 80631

ENGINEER: SHORT ILLIOTT HENDRICKSON, INC. (SEH)
2000 SOUTH COLORADO BLVD
TOWER ONE, SUITE 2000
DENVER, CO 80222

SURVEYOR: KING SURVEYORS
650 GARDEN DRIVE
WINDSOR, CO 80550
PHONE: (970) 686-5011

LAND USE TABLE

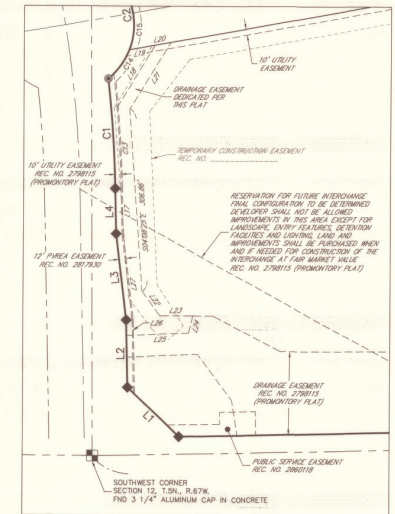
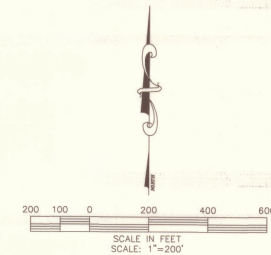
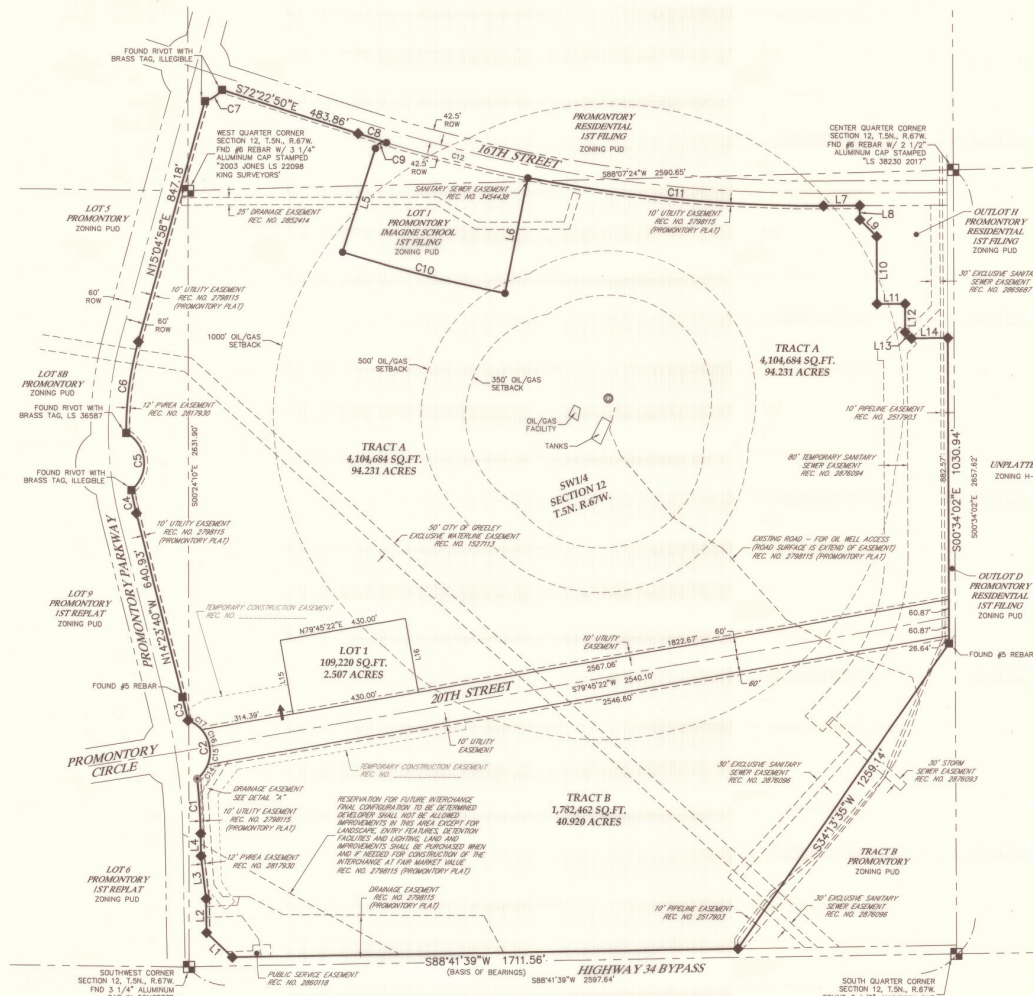
LOT 1	2.507 ACRES	2%
TRACT A	94.231 ACRES	65%
TRACT B	40.920 ACRES	28%
RIGHT OF WAY	7.012 ACRES	5%
TOTAL	144.670 ACRES	100%

PARCEL	DESCRIPTION	DEDICATION	AREA	PERCENT	INTENDED OWNERSHIP/MAINTENANCE BY
LOT 1	FIRE STATION #6		2.507 ACRES	2%	CITY OF GREELEY
TRACT A	FUTURE DEVELOPMENT		94.231 ACRES	65%	PROPERTY OWNER
TRACT B	FUTURE DEVELOPMENT		40.920 ACRES	28%	PROPERTY OWNER
RIGHT OF WAY	PUBLIC USE		7.012 ACRES	5%	CITY OF GREELEY
TOTAL			144.670 ACRES	100%	

A Replat of Tract A, Tract B and Outlot A, Promontory Imagine School First Filing,
Situate in the East Half of Section 11 and West Half of Section 12, Township 5 North, Range 67 West of the 6th P.M.,
City of Greeley, County of Weld, State of Colorado

- EASEMENT LINE
- CENTERLINE
- SECTION LINE
- RIGHT OF WAY LINE
- BOUNDARY LINE
-  FOUND ALIQUOT CORNER AS DESCRIBED
-  SET ALIQUOT CORNER AS DESCRIBED
-  FOUND MONUMENT AS DESCRIBED
-  FOUND #5 REBAR WITH ORANGE PLASTIC CAP LS 15606
-  SET 24" OF #4 REBAR WITH A BLUE PLASTIC CAP STAMPED KS, LS 38209
-  SET RIVET & WASHER STAMPED KS, LS 38209
-  CALCULATED POSITION
-  FUTURE FULL ACCESS POINT

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	186.34	2080.00	27°10'58"	186.28	N03°53'50"W
C2	244.01	1166	120°23'38"	245.01	N09°17'28"W
C3	82.72	2060.00	27°10'53"	82.71	N1°31'48"E
C4	79.85	1140.00	101°40'11"	79.83	N12°23'20"E
C5	228.58	1166	112°54'10"	133.30	N05°30'42"W
C6	312.97	1140.00	124°43'47"	311.99	N07°13'05"E
C7	69.86	1166	101°34'23"	69.81	N06°39'24"E
C8	100.64	5043.00	08°15'58"	100.64	S75°20'58"E
C9	46.74	300	89°19'36"	45.15	S81°50'34"W
C10	567.35	5443.00	5°56'20"	567.08	S76°08'30"E
C11	100.63	5043.00	12°08'11"	100.94	S84°50'56"E
C12	493.48	5043.00	5°36'24"	493.29	S76°19'38"E
C13	136.78	2070.00	34°09'19"	136.75	N03°10'31"E
C14	60.87	1166	30°04'03"	60.18	N35°56'14"E
C15	63.06	1166	31°08'51"	62.26	N59°14'47"E
C16	63.06	1166	31°08'51"	62.29	N29°50'23"E
C17	57.02	1166	28°09'43"	56.44	N28°58'20"W



Paul B. Groves — On Behalf Of King Surveyors
 Colorado Licensed Professional
 Land Surveyor #38209

TRI-POINTE

Mixed Use Development

Conceptual Master Plan

Amendment to the Tri-Pointe Planned Unit Development
Submitted for Westfield Development Company

Zoning Notes

The Project shall be viewed as a single unit.
A waiver for the entire site shall be granted to allow development outside the Mid-Range Expected Service Area expressly contingent upon the issuance of a permit to a major employer for the construction of a minimum facility of 150,000 square feet intended to house at least 300 employees at the site, 500 at full build-out.
No residential or commercial construction shall be allowed until issuance of a building permit for the minimum size 150,000 square foot facility by a major employer.
No fewer than 900 residential units shall be constructed at ultimate build-out.
Any land dedication does not include any water rights.
Should the fire district not require the prescribed land at time of dedication, requirement to dedicate will be waived.
Height Limits: (a) Office uses: 70' excluding enclosed mechanical penthouses or screened rooftop appurtenances.
(b) Retail/Commercial Uses: 40' excluding screened rooftop appurtenances.

All final PUD approvals shall be granted by City Council unless Council approves a set of design guidelines applicable to the various planning areas or uses. In that event, Planning Commission may approve all PUD's governed by those approved guidelines.
This PUD is valid for a period of three years from the date of its approval. If a major employer does not meet the minimum requirements set forth in this PUD within the three year time frame, the entire PUD must return to City Council for review.

Planned Unit Development Criteria

The Tri-Pointe PUD Amendment of 10/16/98 is an amendment to the land uses and development criteria of the existing Tri-Pointe PUD
Open space requirements are being met within Areas E and F and within the eventual parcel by parcel site plans

Mixed Use

Land Uses as identified on this PUD may be combined to the extent identified within the land use mix language of this PUD to encourage a creative mixture of housing, work and shopping opportunities. Quantities and types of specific land uses will be determined at Site Plan of the individual parcels.

PROMONTORY PRELIMINARY PUD, AREAS F, L AND M, 2ND AMENDMENT

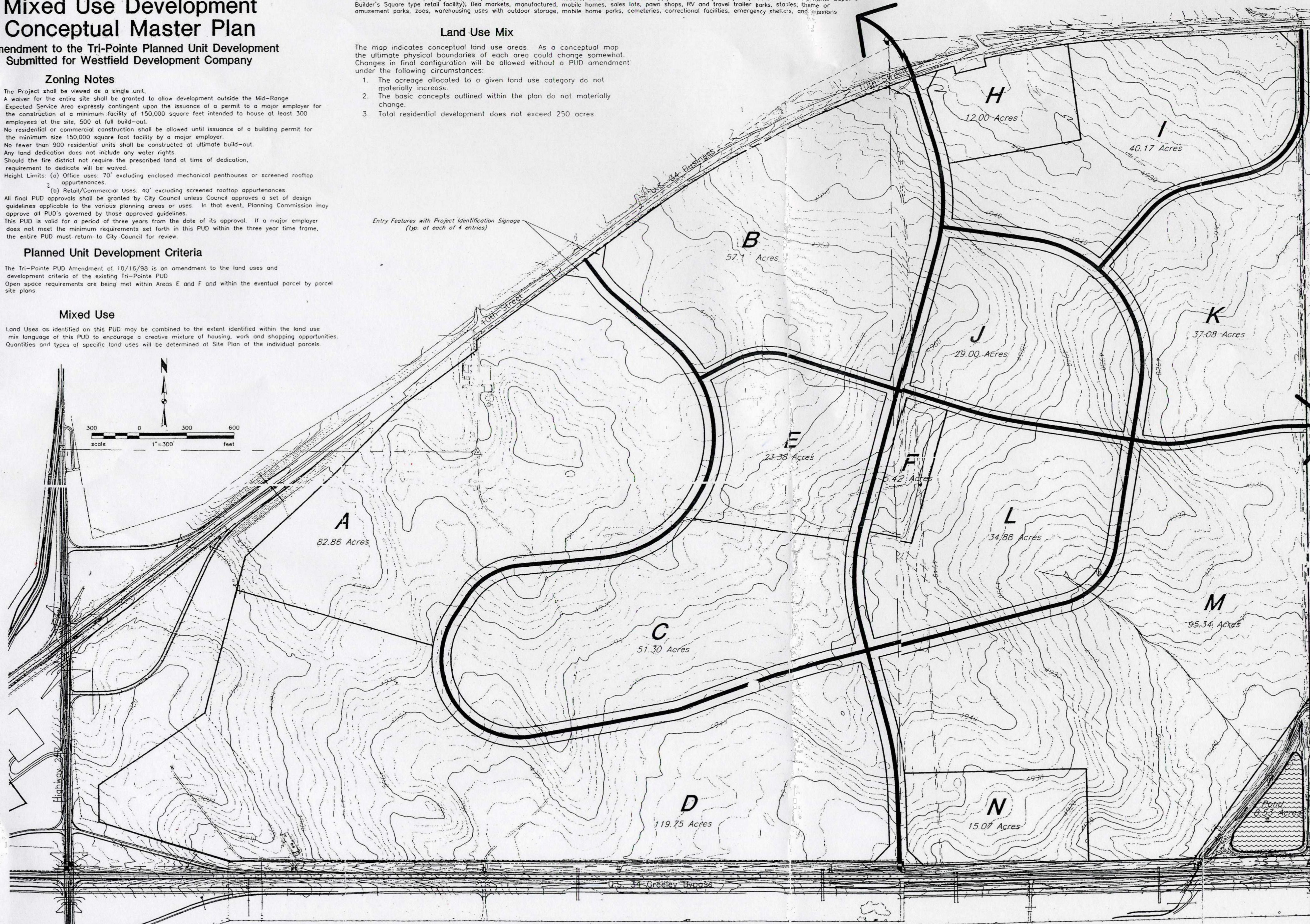
Uses not permitted at Tri-Pointe:
airports, heliports, auto dismantling, junk and salvage yards, bulk storage of flammable liquids and gases for resale (unless temporary for construction purposes only), farm equipment, implement, diesel and sales and repair concrete, asphalt batch plants (unless temporary for construction purposes only), food processing, foundries, grain and feed elevators and supply, recycling centers, large collection and processing facilities, refuse transfer stations, rendering plants, slaughterhouse, meat processing, packaging, utility, commercial towers and cabinets over building height permitted by zone, transportation facilities, low impact, high impact, trucking and freight terminals, truck, trailer and large equipment rental, adult entertainment, kennels, auto dealer sales lots, bingo halls and parlors, livestock auction houses, builders, contractor supply offices and yards (except in the case of a Home Depot or Builder's Square type retail facility), flea markets, manufactured, mobile homes, sales lots, pawn shops, RV and travel trailer parks, stables, theme or amusement parks, zoos, warehousing uses with outdoor storage, mobile home parks, cemeteries, correctional facilities, emergency shelters, and missions

Land Use Mix

The map indicates conceptual land use areas. As a conceptual map the ultimate physical boundaries of each area could change somewhat. Changes in final configuration will be allowed without a PUD amendment under the following circumstances:

1. The acreage allocated to a given land use category do not materially increase.
2. The basic concepts outlined within the plan do not materially change.
3. Total residential development does not exceed 250 acres

Entry Features with Project Identification Signage
(typ. at each of 4 entries)



Allowable Land Use by Area

- Area A and B Office**
- Banks, savings and loans, financial institutions, ATM's, drive-up windows and rental
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Office and corporate headquarters
 - Parking lots and structures
 - Restaurants, deli, cafe, if contained within a primary use building
 - Churches and Schools (Area B only)
 - Recreational areas (Area B only)

- Area C Office/Commercial One**
- Banks, savings and loans, financial institutions, ATM's, drive-up windows and rental
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Commercial laundries and dry cleaning plants
 - Crematoriums
 - Manufacturing, fabrication, assembly
 - Newspaper and publishing plants, binderies
 - Office and corporate headquarters
 - Parking lots and structures
 - Recycling centers - small collection
 - Restaurants, deli, cafe, if contained within a primary use building
 - Research and testing labs
 - Retail sales only as an enclosed regional mall containing a minimum of two anchor stores and 400,000 square feet.
 - Free-standing restaurants only in conjunction with an enclosed mall
 - Multi-family residential not to exceed 25 acres within Areas C and D combined
 - Telecomm. uses
 - Satellite earth station antennas over 18 inches in diameter
 - Utility, comm. towers and cabinets less than building height permitted by zone
 - Utility, comm. towers and cabinets over building height permitted by zone
 - Transportation facilities
 - Low impact
 - High impact
 - Utility service facilities
 - Less than 300 sq. ft., no office or storage space
 - More than 300 sq. ft., no office or storage space

- Area D Office/Commercial Two**
- Animal uses - veterinary clinics (no outdoor runs)
 - Art, dance, photo studios, galleries
 - Auto uses, car wash
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Bars, taverns, nightclubs, lounges
 - Bowling alleys
 - Brew pubs
 - Commercial laundries and dry cleaning plants
 - Convenience stores with or without gas sales
 - Crematoriums
 - Dry cleaning (no cleaning on-site)
 - Farmers markets
 - Gas stations
 - Gas stations with repair, lube and tire shops
 - Golf uses - Golf courses, country clubs, driving ranges, miniature golf
 - Laundromats
 - Lodging - Bed and Breakfast, hotels, motels
 - Manufacturing, fabrication, assembly
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Movie theaters, indoor theaters
 - Newspaper and publishing plants, binderies
 - Nurseries, greenhouses, garden shops
 - Offices and corporate headquarters
 - Parking lots and structures
 - Personal service shops (beauty, barber, tanning and nail salons, shoe repair)
 - Pet stores
 - Printing, copying shops, mail centers
 - Radio and TV stations with antennas lower than 30 feet
 - Recreation uses - Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, etc.), members clubs, health clubs, martial arts studios, open space, park (pocket), park (neighborhood), park (comm/reg)
 - Recycling centers - small collection
 - Restaurants - cafes, and other eating establishments (including outdoor seating/eating areas), drive-in or drive-thru facilities (including outdoor seating areas), drive-up windows
 - Retail sales - under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet), including a regional mall
 - Auditoriums, sports arenas, stadiums
 - Research and testing labs
 - Multi-family residential not to exceed 25 acres, within Areas C and D, combined
 - Telecomm. uses
 - Satellite earth station antennas over 18 inches in diameter
 - Utility, comm. towers and cabinets less than building height permitted by zone
 - Utility, comm. towers and cabinets over building height permitted by zone
 - Transportation facilities
 - Low impact
 - High impact
 - Utility service facilities
 - Less than 300 sq. ft., no office or storage space
 - More than 300 sq. ft., no office or storage space

Area E Open Space

This area is designated to be retained as open space to be developed as a part of the Tri-Pointe PUD Amendment of 10/16/98.

Area F Open Space/Park Residential R-1 Uses, and as amended

To be dedicated to City for parks, open space, and the extension of the Tri-Pointe PUD Amendment of 10/16/98.

- Area H and I Commercial**
- Animal uses - veterinary clinics (no outdoor runs)
 - Art, dance, photo studios, galleries
 - Auto uses, car wash
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Bars, taverns, nightclubs, lounges
 - Bowling alleys
 - Brew pubs
 - Convenience stores with or without gas sales
 - Dry cleaning (no cleaning on-site)
 - Gas stations
 - Gas stations with repair, lube and tire shops
 - Laundromats
 - Personal service shops (beauty, barber, tanning and nail salons, shoe repair similar)
 - Pet stores
 - Printing, copying shops, mail centers
 - Membership clubs, health clubs, martial arts studios
 - Restaurants - Cafes, and other eating establishments (including outdoor seating areas), drive-up windows
 - Retail sales - Under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet)

Areas J, K, L, and M Residential

- Single family dwellings
- Multi-family dwellings
- Two family dwellings
- Townhouse dwellings
- The following uses, not to exceed 15% of the acreage contained within each Planning Area:
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics
 - Hotel, motel
 - Office
 - Recreation uses - Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, (pocket), park (neighborhood), park (comm/reg)
 - Restaurants
 - Retail sales not to exceed 40,000 square feet

Area N Commercial and Residential

- All uses permitted in C-H and R-H Zone Districts
- Area M (within Tract B, Promontory Imagine School Second Filing)
- All uses permitted in C-H and R-H Zone Districts
- Schools

Planning Concepts:

1. Provide a mixed use activity center with a unique identity.
2. Maintain the ability to adjust land uses.

Notes: A minimum 10 acre school site and 1.5 acre Fire Station site will be dedicated to the City out of the residential area. The exact location and

Promontory Preliminary PUD, Areas F, L & M, 2nd Amendment

Supplemental Use Tables

(~~Strikethrough~~ = Text removed, deleted) (**Bold, Italicized** = Text added)

Area F – (~~Open Space~~) **Proposed Residential**

~~To be dedicated to the City for parks, open space, and the extension of the park and lake within Area E.~~

-Fire Stations, schools, recreation uses – (ZON2019-0011) Approved on 9/17/2019

-R-L Uses, and as amended

Areas L and M. Residential

-Single family dwellings

-Multi-family dwellings

-Two family dwellings

-Townhouse dwellings

-open space / park

-Park to be dedicated to the City

-The following uses, not to exceed 15% of the acreage contained within each Planning area:

- Banks, savings and loan, financial institutions, ATM's, drive-up windows

-Medical and dental offices and clinics

-Hotel, motel

-Office

-Recreation uses – Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional)

-Restaurants

-Retail sales not to exceed 40,000 square feet

-Fire Stations, schools, recreation uses – Approved on 9/17/2019

Vice-Chair Briscoe followed up to Ms. Mintz point, asking for clarification on what is the proposed traffic increase. Mr. Belanger responded that the project is anticipated to have a 10.1 percent increase. Vice-Chair Briscoe asked if the city has any plans for redesigning the intersection. Mr. Belanger informed that the 23rd Avenue and Highway 34 Bypass intersection is a CDOT intersection, but that he could speak with city traffic engineers.

Commissioner Modlin asked whether traffic could be diverted down 37th Road into Evans. Ms. Stoller explained that an access point to the mall is located south of the liquor store adjacent to the southern parcel and an additional roundabout provides a way to exit the site. Commissioner Andersen asked if 16th Avenue is able to empty to 11th Avenue via the old John Evans school site. After reviewing a map, Ms. Stoller stated that there appeared to be a way to get to 11th Avenue.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Planning Commission finds that the proposed Use by Special Review for a residential apartment complex in the C-H (Commercial High Intensity) zone district is consistent with the Development Code criteria in Section 24-280; and, therefore, approves the Use by Special Review. Commissioner Modlin seconded the motion.

Commissioner Andersen commented that the proposed project is a creative use and a forward-looking, well-chosen location for residential especially with the bus stop as it currently exists. She noted her shared concerns of the neighbors regarding traffic. Vice-chair Briscoe agreed with Commission Andersen and neighbors regarding traffic concern. He added that the project proposed is an exciting opportunity for Greeley.

Motion carried 4-0.

V. Public hearing to consider a request for a Preliminary PUD Amendment to add all Residential Low Density uses to Area F and relocate the required city park location from Area F to Areas L and M

Project: Promontory Preliminary PUD, Areas F, L & M, 2nd Amendment

Case No.: ZON2021-0006

Applicant: Larry Buckendorf, on behalf of Promontory Investments LLC and Weldco Investors LLC

Location: East of Promontory Parkway, south of 16th Street and north of future 20th Street

Presenter: Mike Garrott, Planning Manager

Mike Garrott addressed the Commission and introduced the proposed agenda item as a Planned Unit Development for Promontory Parkway. Mr. Garrott provided an aerial view of the site located in West Greeley and described surrounding areas. He presented a slide of the Tripointe zoning map, noting that when the area was zoned, the property was sub-zoned resulting in various land uses. He stated that the applicant is requesting to remove the required parkland site from Area F, located near Promontory Parkway and 16th Street, a major arterial area to the site, to a more internal site in the site. He reported that Area F

would become Residential Low Intensity. Mr. Garrott showed a zoomed in view of the 99-acre subject site.

Mr. Garrott provided a summary of the current allowed uses in Area F, adding that uses for a fire station and schools were added in 2019. He stated that Area L & M have essentially residential uses with some lower commercial uses. Mr. Garrott presented several site photos.

Mr. Garrott summarized the Planned Unit Development approval criteria stating that the property has been undeveloped since the project was planned in 1999. He described that the proposal is for a community related use, a park site, and stated that a subdivision request will be presented in the coming weeks. Mr. Garrott reported that the project supports the Comprehensive Plan and Planned Unit Development requirements. Notice letters were mailed to 36 property owners with 500 feet, signs were posted and legal notice was provided in the local newspaper on with no citizen input. Staff recommended approval.

Commissioner Modlin asked about the timeline for a traffic light where this project exits onto Highway 34 bypass. Mr. Garrott clarified the location, the north side of the site, and stated he has not heard of an expected timeline but would speculate when warrants are met, a traffic light will be considered for the location. Commissioner Modlin asked if the traffic light would be installed by CDOT or the City of Greeley. Mr. Garrott explained it would be a cooperative discussion between CDOT and the City. He added that an updated traffic study would need to be conducted since the intersection does not warrant a new traffic light at this time.

Morgan Kidder, Journey Homes, 7251 W 20th Street Suite, Greeley, addressed the Commission and offered to answer any questions.

Commissioner Franzen asked for clarification regarding the reason for moving the park to a more interior part of the lot. Mr. Garrott responded that it was for functionality and potential proximity to a school site. He noted that the proposed location is more integrated into the neighborhood compared to the original approved location from 1999.

Upon question by Commissioner Modlin, Mr. Kidder reported that the homes would be constructed similar to those at the Sheep Draw project on 83rd Avenue.

Vice Chair Briscoe opened the public hearing at 2:04 p.m. There being no communication by U.S. mail, email or Zoom Chat or Q&A, the public hearing was closed at 2:05 p.m.

Commissioner Andersen moved that, based on the application received and the Project Summary and accompanying analysis, the Planning Commission finds that the proposed amendment to the Promontory Preliminary PUD, Areas F, L & M, meets the applicable Development Code criteria, Section 24-625(c) (3) a, b, f, g and h, and Section 24-663(b) 1 and 2; and, therefore, recommends approval of the rezone to the City Council. Commissioner Franzen seconded the motion. Motion carried 4-0.

Council Agenda Summary

Key Staff Contact: Brad Mueller, Community Development Director, 970-350-9786

Tim Swanson, Chief Building Official, 970-350-9853

Title:

Introduction and first reading of an ordinance amending portions of the Greeley Municipal Code, Title 22, Chapter 11 (Electrical Code) as it relates to adopting the 2020 edition of the National Electrical Code, one- and two-family dwellings, Type NM cable, central heating equipment, and auxiliary grounding of photovoltaic systems

Summary:

The National Electrical Code (NEC) is published, and the City adopts the NEC, on a three-year cycle. This cycle the adoption is quite direct, with three deletions of former deletions that were part of past amendments to the NEC. More simply, these three deletions reinstate the existing published NEC language in those Articles. The fourth amendment merely adds eight words to an existing amendment, to coincide with a new Article in the NEC.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	N/A
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

Consideration of this matter is a legislative process.

Colorado State Electrical Board Rules allow and require local jurisdictions to adopt the National Electrical Code, up to one year after the State's adoption. That adoption for the State occurred effective July 1, 2020.

Other Issues and Considerations:

None noted.

Strategic Work Program Item or Applicable Council Priority and Goal:

Consistent with the Operational Excellence priority.

Safety: Manage the health, safety and welfare in a way that promotes a sense of security and well-being for residents, businesses and visitors.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for July 6, 2021.

Attachments:

Ordinance

Construction Trades Advisory and Appeals Board Minutes-Draft (March 30, 2021)

**CITY OF GREELEY, COLORADO
ORDINANCE NO. _____, 2021**

**AN ORDINANCE AMENDING PORTIONS OF THE GREELEY MUNICIPAL CODE TITLE 22, CHAPTER 11
(ELECTRICAL CODE) AS IT RELATES TO ADOPTING THE 2020 EDITION OF THE NATIONAL
ELECTRICAL CODE, ONE- AND TWO-FAMILY DWELLINGS, TYPE NM CABLE, CENTRAL HEATING
EQUIPMENT, AND AUXILIARY GROUNDING OF PHOTOVOLTAIC SYSTEMS**

WHEREAS, the City Council of the City of Greeley is charged with the responsibility of providing for the health, safety and welfare of its residents; and

WHEREAS, adoption of minimum electrical code standards is one method of providing for the protection of residents of the city; and

WHEREAS, the City of Greeley has previously adopted various versions of the National Electrical Code, the most recent being the 2017 National Electrical Code, with local amendments included; and

WHEREAS, it becomes necessary to update the Greeley Municipal Code from time to time to adopt the most recent publication of the National Electrical Code, with local amendments; and

WHEREAS, the 2020 National Electrical Code has been published and is the most recent edition; and

WHEREAS, the Greeley City Council desires to adopt the 2020 National Electrical Code with local amendments.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. Various Sections, within Title 22, Chapter 11 of the Greeley Municipal Code, regarding the Electrical Code, a copy of which is attached hereto as Appendix A, is hereby amended, with deletions shown in strikethrough text and additions shown in bold, underlined text.

Section 2. This ordinance shall become effective five (5) days after publication.

**PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF
_____, 2021.**

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

APPENDIX A

Sec. 22-377. National Electrical Code adopted.

The, National Electrical Code©, 2017 **2020** Edition, referred to in this chapter as this Code or the NEC©, is hereby adopted by reference by the city of Greeley. The National Electrical Code© is published by the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts, 02269 and is referenced as NFPA 70. The city finds that The National Electrical Code© provides for the minimum standards to safeguard life, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of electrical systems. To ensure the safety of the public, this code is to be enforced as published or as amended in this chapter. Enforcement and administrative procedures are also established in this chapter.

Sec. 22-378. Amendments, deletions, and additions designated.

NEC© articles 90.8(A), 110.14(A), 110.14(B), 210.11(C)(3), 210.52(G), **230.70(A)(1)**, 250.118, 334.10, ~~342.10(B)~~, 344.10(B), 348.60, 350.60, and 408.4, ~~422.12 and 690.47(B)~~ of the National Electrical Code© are hereby amended; Annex H of the NEC© is hereby deleted; and articles 210.52(J), 210.52(K), and 210.52(L) are added as set out in sections 16.32.080 through 16.32.091.

22-386 Amended

Sec. 22-386. Article 230.70(A)(1) amended; readily accessible location.

Article 230.70(A)(1) of the NEC©, adopted at section 22-377, is amended to read as follows:

230.70(A)(1) Readily accessible location. The service disconnecting means shall be installed at a readily accessible location either outside of a building or structure or inside nearest the point of entrance of the service conductors.

For a one and two-family dwelling, the service disconnecting means shall be located on the exterior of the structure adjacent to or combined with the utility meter enclosure, and as required by Article 230.85.

22-388 Deleted in its entirety

Sec. 22-388 — Article 334.10 amended; Used Permitted.

Article 334.10 of the NEC®, adopted at Section 22-377, is amended to read as follows:

334.10 — Used Permitted Type NM, Type NMC and Type NMS cables shall be permitted to be used in the following, except as prohibited in 334.12:

- (1) ~~One and two family dwellings and their attached or detached garages, and their storage buildings.~~

(2) Multifamily dwellings permitted to be of Types III, IV, and V construction ~~up to 3 stories in height only and their accessory structures, except as prohibited in 334.12.~~

(3) ~~Deleted in its entirety.~~

(4) Cable trays in structures permitted to be Types III, IV, and V where the cables are identified for the use.

(5) Types I and II construction where installed in raceways permitted to be installed in Types I and II construction.

22-394 Deleted in its entirety

~~Sec. 22-394~~ — ~~Article 422.12, amended; Central Heating Equipment.~~

Article 422.12 of the *NEC*[®], adopted at Section 22-377, is amended to read as follows:

~~422.12 Central Heating Equipment.~~ Central heating equipment other than fixed electric space heating equipment shall be supplied by an individual branch circuit.

~~A combination switch/fuse holder unit such as a SSU or SSY shall be installed as the disconnecting means for central heating equipment such as gas, forced-air furnaces and unit heaters. The fuse shall be sized at 125% of the nameplate rating of the heating equipment.~~

~~Exception No.1: Auxiliary equipment such as a pump, valve, humidifier, or electrostatic air cleaner directly associated with the heating equipment, shall be permitted to be connected to the same branch circuit.~~

~~Exception No 2: Permanently connected air conditioning equipment shall be permitted to be connected to the same branch circuit.~~

~~Exception No. 3. A door chime transformer shall be permitted to be connected to the same branch circuit.~~

22-395 Deleted in its entirety

~~Sec. 22-395~~ — ~~Article 690.47(B), amended; Additional Auxiliary Electrodes for Array Grounding.~~

Article 690.47(B) of the *NEC*[®], adopted at Section 22-377, is amended to read as follows:

(B) Additional Auxiliary Electrodes for Array Grounding. A grounding electrode shall be installed in accordance with 250.52 and 250.54 at the location

~~of all ground- and pole-mounted PV arrays and as close as practicable to the location of roof-mounted PV arrays. The electrodes ***shall*** be connected directly to the array frame(s) or structure. The dc grounding electrode conductor ***shall*** be sized according to 250.166. Additional electrodes are not permitted to be used as a substitute for equipment bonding or equipment grounding conductor requirements. The structure of a ground- or pole-mounted PV array shall be permitted to be considered a grounding electrode if it meets the requirements of 250.52. Roof-mounted PV arrays shall be permitted to use the metal frame of a building or structure if the requirements of 250.52(A) (2) are met.~~

~~*Exception: An additional array grounding electrode(s) shall not be required if located within 1.8 m (6 ft) of the premises wiring electrode.*~~

CONSTRUCTION TRADES ADVISORY & APPEALS BOARD
Proceedings

March 30, 2021
1100 10th Street/Zoom
City Center North
2:00 PM

I. Call to Order

President Jim Morris called the meeting to order at 2:14 PM. Board members Jim Morris, Brad Shade Dick Spitler, Dave Powell, Brian Persons were present virtually, Don Hobart and Larry Pickrel were present in person. Board members Wendell Heyen, Andy Phelps, Bill Gillard and Gene Leach were absent. Staff present in person were Chief Building Official Tim Swanson, virtually were Senior Plans Examiner Matt Wagy, Electrical Inspectors Dusty Shepherd and Casey Herren.

II. Introductions

III. Approval of the June 20, 2019 Board Meeting Minutes

Jim Morris asked if there were any comments or corrections to the June 20, 2019 Board Meeting Minutes. Hearing none, Don Hobart made a motion to approve the June 20, 2019 Board Meeting Minutes, Second by Larry Pickrel. With no further discussion, vote was 7-0 for approval of the minutes.

IV. Review of proposed amendments to the Greeley Municipal Code.

Jim stated that the purpose of the meeting was to review the proposed amendments to the 2020 National Electrical Code (NEC) for adoption. Jim turned it over to Tim Swanson to discuss the review. Tim stated that the first three amendments, which were deletions, had previously been reviewed and supported by the Board, in past meeting over the last couple years. Tim has assembled the Board to review once again, and vote to support presenting those amendments to City Council. The fourth proposed amendment was actually a minor change to an existing amendment, which merely adds the words “and two”, and a pointer to a new Article in the NEC. Tim asked if there were any questions on the four amendments. Hearing none, Larry Pickrel made a motion to approve the four amendments as proposed, second by Dick Spitler. With no further discussion, vote was 7-0 for approval of the minutes.

V. Discussion and approval to recommend adoption of the 2020 National Electrical Code to City Council

Jim Morris asked if there was any further discussion or questions before voting to recommend adoption of the 2020 NEC to the City Council. Hearing none, Dick Spitler made a motion to recommend the adoption of the 2020 National Electrical Code, with the proposed amendments, to City Council. Second by Dave Powell. With no further discussion, vote was 7-0 for approval.

VI. Old Business

None

VII. New Business

None

VIII. Adjournment

Jim Morris asked if there was any Old Business, or New Business to discuss. Hearing none, he said he would entertain a motion to adjourn. Brad Shade made a motion to adjourn. Second by Brian Persons. With no further discussion, vote was 7-0 for approval.

Meeting adjourned at 2:27 PM

Jim Morris, Chair_____

Timothy H. Swanson, Secretary

Council Agenda Summary

Key Staff Contact: Sean Chambers, Water & Sewer Director, 970-350-9815

Title:

Introduction and first reading of an ordinance authorizing the sale of city-owned property located in Section 22, Township 8 North, Range 65 West Of The 6th P.M., Weld County, Colorado, containing 282.00 acres of land, more or less, commonly referred to as the Hasbrouck Farm and city-owned property located in Section 28, Township 8 North, Range 65 West Of The 6th P.M., Weld County, Colorado, containing 156 acres of land, more or less, commonly referred to as the Varra Farm

Summary:

In 2016, the City of Greeley purchased: 1) a 282-acre farm in Weld County (known as the “Hasbrouck Farm”) along with 2.25 shares of the stock in the Water Supply and Storage Company (“WSSC”); and 2) a 156-acre farm in Weld County (known as the “Varra Farm”) along with 2 shares of stock in WSSC. In March 2021, city staff negotiated terms with Longs Peak Dairy to purchase 5 1/6 shares of WSSC stock for \$12.9 million. As part of compensation, Longs Peak Dairy agreed to purchase the Hasbrouck and Varra farms for \$2 million, reducing the cash compensation of the WSSC purchase to \$10.9M. As part of the sale of the farms, Greeley would enter into a 10-year primary leaseback of the WSSC Water Rights, which may be extended for up to 5, 1-year terms to the buyer for continued irrigation on the Hasbrouck and Varra Farms. Continued irrigation of the farms through leasebacks benefits the city by offsetting assessments paid on WSSC stock and contributing to the historical consumptive use of the shares, which is an important consideration for future city change of use cases.

On May 19, 2021, the Greeley Water and Sewer Board approved the purchase and sale agreement with Longs Peak Dairy for the purchase of the WSSC stock. In doing so, the Board recommended that City Council authorize the disposition of the Hasbrouck and Varra farms.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$2,000,000 credit towards a water purchase
What is the annual impact?	None
What fund of the City will provide Funding?	423 – Water Acquisition Fund
What is the source of revenue within the fund?	Cash-in-Lieu, Bonds
Is there grant funding for this item?	No
If yes, does this grant require a match?	N/A
Is this grant onetime or ongoing?	N/A
Additional Comments:	The \$2 million value for the Hasbrouck and Varra Farms was used to reduce the cash outlay Greeley paid for the purchase of 5 and 1/6 shares of WSSC.

Legal Issues:

Pursuant to 17-4(c) of the City Charter, City Council must approve the sale or exchange of land authorized by the Water and Sewer Board. The City Council has the authority, by ordinance, to approve the sale of real property that is not being used for governmental purpose.

Other Issues and Considerations:

None

Strategic Work Program Item or Applicable Council Priority and Goal:

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for July 6, 2021.

Attachments:

Ordinance
Purchase and Sale Agreement

**CITY OF GREELEY, COLORADO
ORDINANCE NO. _____, 2021**

AN ORDINANCE AUTHORIZING THE SALE OF CITY-OWNED PROPERTY LOCATED IN SECTION 22, TOWNSHIP 8 NORTH, RANGE 65 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO, CONTAINING 282.00 ACRES OF LAND, MORE OR LESS, COMMONLY REFERRED TO AS THE HASBROUCK FARM AND CITY-OWNED PROPERTY LOCATED IN SECTION 28, TOWNSHIP 8 NORTH, RANGE 65 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO, CONTAINING 156 ACRES OF LAND, MORE OR LESS, COMMONLY REFERRED TO AS THE VARRA FARM

WHEREAS, in 2016, the City of Greeley ("City"), acting by and through its Water and Sewer Board ("Board"), purchased three parcels of land located in Section 22, Township 8 North, Range 65 West, 6th P.M., Weld County, Colorado, commonly referred to as the Hasbrouck Farm, along with two and one-quarter shares of the stock in the Water Supply and Storage Company ("WSSC"). That same year, the Board authorized and the City purchased another parcel of land located in Section 28, Township 8 North, Range 65 West, 6th P.M., Weld County, Colorado, commonly referred to as the Varra Farm, along with two shares of the stock in WSSC (collectively, the "Farms"); and

WHEREAS, since 2016, the City has leased the Farms, along with the respective water rights, to tenant farmers in order to sustain the beneficial use of the water rights on the historically irrigated land; and

WHEREAS, Water and Sewer Department staff ("W&S Staff") negotiated the purchase and sale of five and one-sixth shares of WSSC (among other terms and conditions), in exchange for the payment of ten million five hundred thousand dollars and the Farms (but not the associated WSSC shares); and

WHEREAS, on May 19, 2021, W&S Staff presented the terms of the purchase and sale to the Board. The Board subsequently approved the associated Purchase and Sale Agreement ("Agreement"), by and between Longs Peak Dairy, a Colorado limited liability company and the City, acting by and through its water enterprise, and recommended that City Council authorize the conveyance of the Farms (but not the associated WSSC Shares) as contemplated within the Agreement; and

WHEREAS, pursuant to 17-4(c) of the City Charter, City Council must approve the sale or exchange of any land authorized by the Water and Sewer Board; and

WHEREAS, pursuant to C.R.S. §31-15-713(b), City Council has the authority, by ordinance, to approve the sale of real property that is not being used for a governmental purpose.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. That the Farms are not being held or used for a governmental purpose, are surplus property, and are unnecessary to retain for any governmental or non-governmental purpose.

Section 2. That the sale of the Farms is approved, in accordance with the terms and conditions of the Agreement, attached hereto as Exhibit A.

Section 3. That the Director of Water and Sewer, or his designee, is authorized to enter into minor amendments to the Agreement, including but not limited to the deadline extensions, and to execute all documents necessary to close on the Agreement.

Section 4. That, upon the satisfaction of all terms under the Agreement and any amendments thereto, the Mayor is authorized to execute the deeds and any other document necessary to convey the Farms.

Section 5. This ordinance shall take effect five days after its final publication as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS ____ DAY OF _____, 2021.

ATTEST

THE CITY OF GREELEY

City Clerk

Mayor

EXHIBIT A

PURCHASE AND SALE AGREEMENT (Longs Peak Dairy, LLC)

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (as defined in Section 1.15 below) by and between LONGS PEAK DAIRY, LLC (“Seller”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE (“Greeley”) (Seller and Greeley each being a “Party” and collectively the “Parties”).

RECITALS

A. Seller owns real property located in Weld County, Colorado, commonly referred to as the “Owl Creek Farm”, legally described on Exhibit “A” attached hereto and incorporated herein by reference (the “Historic Property”).

B. Seller is the owner of water and water rights represented by five and one-sixth (5-1/6) shares of stock in The Water Supply and Storage Company (the “Ditch Company”), evidenced by (i) Stock Certificate No. 6576 (for two (2) shares), (ii) Stock Certificate No. 6581 (for one-half (1/2) of a share), (iii) Stock Certificate No. 6603 (for five-twelfths (5/12) of a share), (vi) Stock Certificate No. 6614 (for two (2) shares), and (v) Stock Certificate No. 6617 (for one-fourth (1/4) of a share), issued in the name of Seller, depicted on Exhibit “B”, attached hereto and incorporated herein by reference (collectively, the “Ditch Company Certificates”), which have historically been delivered through the Larimer County Ditch.

C. Seller is also the owner of certain stock certificates evidencing an interest in certain lateral ditch companies, which have been used to convey the Water Rights to the Historic Property. The stock certificates include five and one-sixth (5-1/6) shares of stock in The Collins Ditch Company (“Collins”), evidenced by Stock Certificate No. 844 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares); and five and one-sixth (5-1/6) shares of stock in The Lone Tree Lateral Company (“Lone Tree”), evidenced by Stock Certificate No. 230 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares), issued in the name of Seller, depicted on Exhibit “C”, attached hereto and incorporated herein by reference (collectively, the “Lateral Certificates”).

D. To the best of the Parties’ knowledge and belief, the Ditch Company Certificates and the Lateral Certificates represent ownership of and the right to divert, deliver, and use water under and a proportional interest in the water rights described on Exhibit “D” (the “Water Rights”).

E. Seller is also the owner of water and water rights represented by seven (7) shares of stock in the Ditch Company, evidenced by Stock Certificate No. 6473 (for four (4) shares), Stock Certificate No. 6588 (for one and one-fourth (1-1/4) shares), Stock Certificate No. 6589 (for one-fourth (1/4) share), and Stock Certificate No. 6611 (for one and one-half (1-1/2) shares); eleven (11) shares of stock in The Peirce Lateral Company, evidenced by Stock Certificate No. 606 (for six (6) shares), Stock Certificate No. 628 (for three (3) shares), and Stock Certificate No. 631 (for two (2) shares); three and five-sixths (3-5/6) shares of stock in the Collins,

evidenced by Stock Certificate No. 851 (for (2) shares), and Stock Certificate No. 863 (for one (1) share), together with the balance of Stock Certificate No. 844 (for five-sixth (5/6) of a share); one and five-sixths (1-5/6) shares of stock in the Lone Tree, evidenced by Stock Certificate No. 255 (for one (1) share), together with the balance of Stock Certificate No. 230 (for five-sixth (5/6) of a share); and one and one-half (1-1/2) shares of stock in the Cross Cut Ditch Company (“Cross Cut”), evidenced by Stock Certificate No. 110, all of which have been issued in the name of Seller, depicted on Exhibit “E”, attached hereto and incorporated herein by reference (the “ROFR Certificates”), which have also historically been delivered through the Larimer County Ditch.

F. To the best of the Parties’ knowledge and belief, the ROFR Certificates represent ownership of and the right to divert and use water under and a proportional interest in the water rights described on Exhibit “D” (the “ROFR Water Rights”).

G. Greeley owns real property located in Weld County, Colorado, commonly referred to as the “Varra Farm” and the “Hasbrouck Farm”, legally described on Exhibit “F-1” and “F-2” respectively, attached hereto and incorporated herein by reference (collectively, the “Land”).

H. Seller desires to sell, and Greeley desires to purchase, the Property (defined below) and, as part of the consideration for the Property, Greeley desires to convey, and Seller desires to accept, the Land.

I. The Parties also desire to enter into an agreement at Closing (defined below) that will grant Greeley a right of first refusal to purchase the ROFR Water Rights and Seller a right of first refusal to buy back a portion of the Water Rights represented by Stock Certificate No. 844 (i.e., five and one-six (5-1/6) shares) conveyed to Greeley at Closing (the “ROFR Agreement”), in the form attached hereto as Exhibit “G”.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, Seller and Greeley hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

In addition to words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings:

1.1 “*Agreement*” means this purchase and sale agreement.

1.2 “*Ancillary Interests*” means all right, title and interest of Greeley, without warranty of any type, in and to: (i) all governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Land; (ii) any and all other rights, privileges and appurtenances owned by Greeley, which relate to or are used

in connection with the Land to the extent that they are assignable; and (iii) the Transferable Water Rights (defined below).

1.3 “*Augmentation Plans*” mean those augmentation plans known as Lonetree Members Accretion Company augmentation plan, decreed on January 14, 2009, in Case No. 2003CW0089, and the Cache la Poudre Augmentation Plan, decreed on February 10, 1975, in Case No. W-7921 (75).

1.4 “*Board*” means the Greeley Water and Sewer Board.

1.5 “*Closing*” means the closing of this transaction.

1.6 “*Closing Date*” means the date of the Closing.

1.7 “*Council*” means the Greeley City Council.

1.8 “*Covenants*” means the Restrictive Covenants-No Irrigation and Revegetation, in the form of Exhibits “H-1”, “H-2”, and “H-3” attached hereto and incorporated herein.

1.9 “*Deposit*” has the meaning given in Section 3.2.

1.10 “*Diligence*” has the meaning given in Section 5.1.D.

1.11 “*Ditch Company*” means The Water Supply and Storage Company.

1.12 “*Ditch Company Certificates*” has the meaning given in Recital B.

1.13 “*Double J Lease*” has the meaning given in Section 4.6.D.

1.14 “*Dry-up Area*” has the meaning given in Section 4.5.

1.15 “*Effective Date*” means the date upon which the last party hereunder signs this Agreement in accordance with Sections 13.16 and 13.17 below.

1.16 “*Excluded Water Rights*” means the water and water rights represented by four and one-fourth (4-1/4) shares of stock in the Ditch Company, represented by Stock Certificate No. 6698 and Stock Certificate No. 6721; four (4) shares of stock in the Collins, represented by Stock Certificate No. 855 and Stock Certificate No. 858; and five (5) shares of Lone Tree represented by Stock Certificate No. 251 and Stock Certificate No. 252, all of which have been issued to Greeley.

1.17 “*Governing Body Approvals*” has the meaning given in Section 6.1.

1.18 “*Governmental Approval Period*” has the meaning given in Section 6.1.A.

1.19 “*Greeley’s Off-Record Documents*” has the meaning given in Section 4.4.B.

1.20 “*Greeley’s Title Documents*” has the meaning given in Section 4.4.A.

1.21 “*Historic Property*” means the real property defined under Recital A above.

1.22 “*Improvements*” means all existing improvements, structures, pipes and fixtures placed, constructed, installed or located on the Land; all fences, gates, plants, trees, landscaping and other appurtenances, if any, upon, over or under the Land; and all furniture, furnishings, appliances, equipment, machinery and other items of personal property, including irrigation sprinklers systems and all associated pumps, motors, pipes, and fuel injection systems, if any, upon, over or under the Land.

1.23 “*Inspections*” has the meaning given in Section 5.1.A.

1.24 “*Inspection Period*” has the meaning given in Section 5.1.A.

1.25 “*JV Farms Lease*” has the meaning given in Section 4.6.C.

1.26 “*Land*” means the real property defined under Recital H above, which will be conveyed to Seller along with the Improvements and the Ancillary Interests.

1.27 “*Lateral Certificates*” has the meaning given in Recital C.

1.28 “*Material Part*” means a portion of the Property that would have a material adverse effect on Greeley’s use of the Property as determined by Greeley in its good faith judgment.

1.29 “*Seller’s Off-Record Documents*” has the meaning given in Section 4.1.C.

1.30 “*Permitted Exceptions*” has the meaning given in Section 4.6.

1.31 “*Property*” means (i) the Water Rights and (ii) the Covenants.

1.32 “*Purchase Price*” has the meaning given in Section 3.1.

1.33 “*Specified Sum*” has the meaning given in Section 9.4.

1.34 “*ROFR Agreement*” has the meaning given in Recital J above.

1.35 “*ROFR Certificates*” has the meaning given in Recital F above.

1.36 “*ROFR Water Rights*” has the meaning given in Recital G above.

1.37 “*Title Commitment*” means a commitment for an owner’s policy of title insurance, whether for the Historic Property Title Commitment or the Land Title Commitment.

1.38 “*Title Company*” means Land Title Guaranty.

1.39 “*Transferable Water Rights*” all right, title and interest of Greeley, without warranty of any type, to all water and water rights, wells and well permits and rights, ditches and ditch rights, reservoirs and reservoir rights appurtenant to the Land, whether tributary, nontributary or not nontributary, including, but not limited to, any domestic and/or irrigation

wells and well permits located on or associated with or appurtenant to the Land; EXCEPT FOR THE EXCLUDED WATER RIGHTS. SELLER WILL ACCEPT ALL WELLS ASSOCIATED WITH THE LAND "AS-IS" IN ALL RESPECTS. The Transferable Water Rights include certain wells that are subject to the Augmentation Plans, the rights and obligations to which Greeley will assign, and Seller will assume, at Closing.

1.40 “*Seller’s Title Documents*” has the meaning given in Section 4.1.A.

1.41 “*Water Rights*” has the meaning given in Recital E above.

1.42 “*Water Leases*” means those Irrigation Water Lease Agreements in the form of Exhibits “I-1”, “I-2”, and “I-3” attached hereto and incorporated herein.

ARTICLE 2

SALE OF PROPERTY, CONVEYANCE OF THE LAND, AND AGREEMENTS

2.1 Property. Seller agrees to sell, and Greeley agrees to buy, on the terms and conditions set forth in this Agreement, the Property.

A. Exclusions. There are no exclusions from the Property.

2.2 Land. Greeley agrees to convey, and Seller agrees to accept, on the terms and conditions set forth in this Agreement, the Land.

A. Inclusions. The Improvements and the Ancillary Interests.

B. Exclusions. The Excluded Water Rights.

2.3 Water Lease. Greeley and Seller agrees to enter into the Water Leases at Closing, subject to the terms and conditions set forth in this Agreement.

2.4 ROFR Agreement. Greeley and Seller agrees to enter into the ROFR Agreement at Closing, subject to the terms and conditions set forth in this Agreement.

ARTICLE 3

PURCHASE PRICE

3.1 Purchase Price. Total consideration for the Property and the ROFR Agreement shall be (i) ten million, nine hundred thousand dollars (\$10,900,000.00) (“Purchase Price”); (ii) conveyance of the Land to Seller; and (iii) the Water Leases.

3.2 Deposit and Release of Deposit. Within fourteen (14) days following the Effective Date of this Agreement, Greeley shall transfer and deposit with the Title Company one hundred thousand dollars (\$100,000.00) (“Deposit”). The Deposit shall be fully refundable to Greeley at any time prior to the expiration of the Inspection Period (defined below) if Greeley is not satisfied with the Property and shall be subject to return to Greeley either prior to or after the expiration of the Inspection Period upon termination of this Agreement pursuant to Section 5.2,

Section 6.1, Section 9.3 and 10 below. The Deposit shall be deducted from the Purchase Price at Closing as provided in Section 3.3 below.

3.3 Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing; and (iii) plus or minus any prorations or credits, shall be paid at Closing by cashier's check, wire transfer or other immediately available funds.

ARTICLE 4 TITLE

4.1 Within fourteen (14) days after the Effective Date of this Agreement, Seller shall provide the following to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Historic Property Title Commitment") issued by the Title Company covering the Historic Property in the amount of the Purchase Price, with such Historic Property Title Commitment setting forth the status of title to the Historic Property and showing the Title Company's search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Historic Property (the copies of all recorded documents in the Historic Property Title Commitment are collectively referred to as "Seller's Title Documents").

B. A fully executed historical consumptive use affidavit and questionnaire describing the historical use of (i) the Water Rights, in the form of Exhibit "J-1" attached hereto and incorporated herein, and (ii) the ROFR Water Rights, in the form of Exhibit "J-2" attached hereto and incorporated herein.

C. To the extent the same exist, true and correct copies of all Company documents related to the Water Rights and the ROFR Water Rights, including but not limited to, the delivery records and share trace. Seller agrees that Company documents, including but not limited to the share trace, are a necessary component of Greeley's inspection activities. Seller shall request such documents as soon as is reasonably possible after the Effective Date of this Agreement. The Parties acknowledge that these documents may not be available within fourteen days of the Effective Date of this Agreement. If the Company provides such documents less than seven (7) days before the end of the Inspection Period (defined below), then the Inspection Period shall be automatically extended for an additional fourteen (14) days.

D. To the extent the same exist, true and correct copies of all: (i) documents that relate to the title, use, quantity, quality and condition of the Water Rights and the ROFR Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Seller; (ii) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Water Rights and the ROFR Water Rights and/or Historic Property; and (iii) any engineering, investigation or inspection document or reports related to the Water Rights and the ROFR Water Rights and/or Historic Property, (collectively referred to as "Seller's Off-Record Documents").

4.2 Condition and Vesting of Title to the Water Rights; Conveyance. At Closing, Seller shall convey the Water Rights to Greeley by special warranty deed, in the form attached as Exhibit “K” free and clear of all liens and encumbrances.

4.3 Title Insurance for the Water Rights. The purpose of the Historic Property Title Commitment is to enable Greeley to conduct the title review described in Article 5 below, and said Historic Property Title Commitment shall be updated as necessary up to the Closing; however, neither Seller nor Greeley shall have any obligation under this Agreement to purchase a title insurance policy after Closing. Greeley may elect to acquire this insurance (limited to the Covenants attached hereto as Exhibits H-1, H-2, and H-3) at its expense.

4.4 Within fourteen (14) days after the Effective Date of this Agreement, Greeley shall provide the following to Seller for review:

A. A commitment for an owner’s policy of title insurance (“Land Title Commitment”) issued by the Title Company covering the Land in the amount of two million dollars (\$2,000,000.00), with such Land Title Commitment setting forth the status of title to the Land and showing the Title Company’s search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Land (the copies of all recorded documents in the Land Title Commitment are collectively referred to as “Greeley’s Title Documents”).

B. To the extent the same exist, true and correct copies of all: (i) governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Land; (ii) well permits relating to the exposure of groundwater to evaporation and/or consumption, together with any "substitute water supply plans" describing methods used to replace evaporative and consumptive groundwater losses; (iii) copies of all contracts or other agreements relating to the operation, maintenance or leasing of the Land or any portion thereof; and (iv) any other agreements affecting the Land which are not included in the Title Documents provided by the Title Company (collectively referred to as “Greeley’s Off-Record Documents”).

4.5 Survey of Historic Property. Prior to the expiration of the Inspection Period, Greeley shall have prepared a survey of the Historic Property, depicting that area which shall be subject to the Covenants (“Dry-up Area”). The Dry-up Area shall include sufficient acreage historically irrigated by the Water Rights to enable Greeley to obtain judicial approval of a change of use of the Water Rights and to obtain full credit for the historical consumptive use of the Water Rights when the Historic Property is subject to the Covenants. Upon completion of the survey, this Agreement will be deemed amended to incorporate the legal description and depiction of the Dry-up Area on Exhibit H-1 and the Parties will enter into an amendment to document the same.

4.6 Condition and Vesting of Title to the Land; Conveyance. At Closing, Greeley agrees to convey, and Seller agrees to accept, title to the Land free and clear of all liens and encumbrances subject to the following (“Permitted Exceptions”) and to convey the same by special warranty deed, in the form attached as Exhibits “L-1” and “L-2”.

A. All covenants, easements, agreements, restrictions and other recorded documents set forth in the Land Title Commitment, except for mortgages, mechanic's liens and other financial encumbrances which shall be discharged by Greeley at Closing

B. Any matters created by or through Seller.

C. Existing written Farm Lease, dated December 13, 2016, by and between JV Farms, Inc. and Greeley, previously provided to Seller on or about March 3, 2021 ("JV Farms Lease").

D. Existing written Farm Lease, dated June 9, 2016, by and between Double J Farms & Feeding, Inc. and Greeley, previously provided to Seller on or about March 3, 2021 ("Double J Lease").

4.7 Disapproved Title Matters. Except for Permitted Exceptions, Seller may disapprove of title exceptions ("Disapproved Matter") by delivering written notice of objection to Greeley either (i) prior to the expiration of the Inspection Period or (ii) if notice of such title exception is delivered after the expiration of the Inspection Period but prior to the Closing Date, then within ten days (10) days after receiving such notice from Greeley or the Title Company. Any Disapproved Matter not objected to in writing prior to the expiration of the Inspection Period or within such ten (10) day period shall be deemed an additional Permitted Exception. Greeley may elect (but shall not be obligated) to cure any Disapproved Matter by (i) removing or causing the Disapproved Matter to be removed or resolved at Greeley's expense; (ii) by obtaining title insurance insuring against the effect of the Disapproved Matter; or (iii) by any other means acceptable to Seller (each a "Cure"). Within ten (10) days after Greeley's receipt of Seller's notice of a Disapproved Matter, Greeley shall notify Seller in writing whether Greeley elects to Cure such Disapproved Matter and, if it elects to do so, the method or means of the Cure. If Greeley elects, but fails or is unable to Cure a Disapproved Matter prior to the Closing Date, then Seller may, on the date of Closing, deliver written notice to Greeley that it objects to the Land in accordance with the terms and conditions of Section 6.1.C. If Greeley elects not to Cure one (1) or more Disapproved Matter, then within (i) ten (10) days after Seller's receipt of Greeley's written notice regarding such election, or (ii) on the Closing Date, whichever occurs first in time, Seller may deliver written notice to Greeley that it objects to the Land in accordance with the terms and conditions of Section 6.1.C. If Seller does not exercise its rights pursuant to this Section 4.7, then Seller shall be deemed to have accepted any outstanding Disapproved Matters and the Parties shall proceed to Closing, subject to the provisions of this Agreement, without any change to the Purchase Price or other remedy.

4.8 Title Insurance for the Land. The Title Company shall commit at Closing that, as soon as reasonably practical after the Closing, the Title Company shall issue to Seller an ALTA owner's form of title insurance policy, insuring that title to the Land is vested in Seller, subject to the Permitted Exceptions ("Title Policy").

ARTICLE 5

INSPECTION PERIOD

5.1 Inspections.

A. Inspection Period; Right to Inspect. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the Sixty-third (63rd) day thereafter (“Inspection Period”), unless automatically extended in accordance with Section 4.1.C. above, Greeley and its authorized agents, representatives and consultants shall be entitled to: (i) enter upon the Historic Property (or any other property owned by Seller that is irrigated with the ROFR Water Rights) at all reasonable times, to perform such tests or inspections, as Greeley deems desirable, to allow Greeley to evaluate the Water Rights and the ROFR Water Rights and the condition and use of the Property; (ii) contact and interview the managers, members, employees and agents of Seller to assist Greeley in determining the historical use of the Water Rights and the ROFR Water Rights; (iii) contact the officers, directors, attorneys, and shareholders of the Company to inspect any Company records and/or determine under what conditions the Company will approve a change in the place of delivery or use, or the point of diversion, of the Water Rights and the ROFR Water Rights and other Company shares obtained or to be obtained by Greeley, pursuant to the bylaws of the Company or other applicable law (collectively referred to as “Inspections”). Seller agrees to cooperate with Greeley to facilitate such interviews and/or the signing of any affidavits of use of the Water Rights and the ROFR Water Rights by Seller or to facilitate such contact and/or request for information or determination by the Company. Greeley shall bear all costs of such Inspections. Seller agrees to reasonably cooperate with any such Inspections made by or at Greeley’s direction.

B. Conditions of Greeley’s Access. Greeley and its authorized agents, representatives and consultants (i) shall not unreasonably interfere with the operation and maintenance of the Historic Property (or any other property owned by Seller that is irrigated with the ROFR Water Rights); (ii) shall comply with all reasonable requirements imposed upon them in connection with such inspection by Seller; (iii) shall not injure or otherwise cause bodily harm to Seller, their agents, contractors or employees; (iv) shall promptly pay when due the costs of all Inspections done with regard to the Property; (v) shall not permit any liens to attach to the Historic Property (or any other property owned by Seller that is irrigated with the ROFR Water Rights) by reason of the exercise of its rights hereunder; and (vi) shall restore the Historic Property (or any other property owned by Seller that is irrigated with the ROFR Water Rights) as nearly as practicable to substantially the same condition in which the Historic Property was found before any such Inspections were undertaken. Notwithstanding anything in this Agreement to the contrary, Greeley shall not be permitted to perform any invasive tests on the Historic Property (or any other property owned by Seller that is irrigated with the ROFR Water Rights) without Seller’s prior written consent, which consent may be withheld in Seller’s sole discretion.

C. Seller’s Inspections and Conditions of Access. During the Inspection Period, and any extension thereof, Seller and its authorized agents, representatives and consultants shall be entitled to enter upon the Land at all reasonable times, to perform such tests or inspections, as Seller deems desirable, to allow Seller to evaluate the condition and use of the Land (collectively referred to as “Diligence”). Seller shall bear all costs of the Diligence. Greeley agrees to reasonably cooperate with any such Diligence made by or at Seller’s direction. Notwithstanding the foregoing, Seller acknowledges that the Land is currently subject to those leases described under Section 4.6 above. As such, Greeley agrees to assist Seller in obtaining access to the Land to conduct such Diligence subject to the terms of the applicable lease, and Seller agrees to abide by the same when accessing the Land.

D. Conditions of Seller's Access. Seller and its authorized agents, representatives and consultants (i) shall not unreasonably interfere with the operation and maintenance of the Land; (ii) shall comply with all reasonable requirements imposed upon them in connection with such Diligence by Greeley or Greeley's lessees; (iii) shall not injure or otherwise cause bodily harm to Greeley, their agents, contractors, employees or lessees; (iv) shall promptly pay when due the costs of all Diligence done with regard to the Land; (v) shall not permit any liens to attach to the Land by reason of the exercise of its rights hereunder; and (vi) shall restore the Land as nearly as practicable to substantially the same condition in which the Land was found before any such Diligence activities were undertaken. Notwithstanding anything in this Agreement to the contrary, Seller shall not be permitted to perform any invasive tests on the Land without Greeley's prior written consent, which consent may be withheld in Greeley's sole discretion.

5.2 Objections.

A. Greeley's Objections. If during the Inspection Period, Greeley shall, for any reason, in Greeley's sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Property or its Inspections relating thereto, Greeley shall be entitled to terminate this Agreement by giving written notice to Seller on or before the expiration of the Inspection Period, whereupon the Deposit shall be returned to Greeley and all provisions of this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall terminate. If Greeley's written notice of termination is not delivered to Seller prior to the expiration of the Inspection Period, the Deposit shall not be refunded to Greeley if, for any reason other than as a result of a default by Seller or pursuant to Section 6.1, Section 9.3 or Article 10, the Closing of this transaction does not occur.

5.3 Seller's Objections. If during the Inspection Period, Seller shall, for any reason, in Seller's sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Land or its Diligence relating thereto, Seller may deliver written notice to Greeley that it objects to the Land in accordance with the terms and conditions of Section 6.1.C. If Seller does not exercise its rights pursuant to this Section 5.3 prior to the expiration of the Inspection Period, then Seller shall be deemed to have accepted the Land and the Parties shall proceed to Closing, subject to the provisions of this Agreement, without any change to the Purchase Price or other remedy.

5.4 Deadlines. The table below contains a non-exclusive list of the dates and deadlines for this Agreement.

Section	Deadline	Date
§ 3.2	Deposit	Fourteen (14) days following the Effective Date
§ 4.1	Seller's Title Documents	Fourteen (14) days following the Effective Date
§ 4.1	Seller's Off-Record Documents	Fourteen (14) days following the Effective Date
§ 4.4	Greeley's Title Documents	Fourteen (14) days following the Effective Date
§ 4.4	Greeley's Off-Record Documents	Fourteen (14) days following the Effective Date
§ 5.1	Inspection Period	Sixty-three (63) days following the Effective Date

		unless automatically extended in accordance with Section 4.1.C.
§ 5.2	Objections	On or before the expiration of the Inspection Period
§ 6.1	Governing Body Approvals	Twenty-eight (28) days after the expiration of the Inspection Period
§ 6.2	Closing Date	Fourteen (14) days after the expiration of the Governmental Approval Period
§ 9.3.C.	Default Cure Period	Within seven (7) days of written notice of default from the other Party
§10	Condemnation	Within fourteen (14) days after written notice

ARTICLE 6

CLOSING

CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies. Sections 6.1.A and 6.1.B are collectively referred to as the “Governing Body Approvals.”

A. Governing Body Approval. Greeley’s obligation to close on the Property is contingent upon (i) the Board’s authorization to close on the Property within twenty-eight (28) days after the expiration of the Inspection Period (“Governmental Approval Period”) and (ii) the Council’s appropriation of funds for the Purchase Price on or before the expiration of the Governmental Approval Period. In the event that the Board has not authorized Closing on the Property or the Council fails to appropriate funds for the Purchase Price prior to the expiration of the Governmental Approval Period, then, in such event, upon Greeley’s written notice to Seller, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

B. Authorization to Convey Land. Greeley’s obligation to convey title to the Land is subject to the Council’s authorization to convey the Land to Seller on or before the expiration of the Governmental Approval Period. In the event the Council does not authorize the conveyance, then, in such event, upon Greeley’s written notice to Seller, the Parties shall (i) amend this Agreement to exclude (x) conveyance of the Land (together with the Improvements and the Ancillary Interests) to Seller and (y) one (1) share of Ditch Company Stock, and the corresponding Lateral Right, from the description of the Water Rights and (ii) extend the Closing Date in order to accomplish the same. All other terms shall remain the same, including but not limited to the Purchase Price.

C. Acceptance of the Land. Seller’s obligation to accept title to the Land (together with the Improvements and the Ancillary Interests) is subject to Seller’s satisfaction of the Land as provided herein. In the event Seller exercises its right to object to the Land in accordance with Section 4.7 or Section 5.3, then, in such event, upon Seller’s written notice to Greeley, the Parties shall (i) amend this Agreement to exclude (x) conveyance of the Land (together with the Improvements and the Ancillary Interests) to Seller and (y) one (1) share of stock from Ditch Company Certificates, and the shares of stock (i.e., one (1) Collins and one (1)

Lone Tree) from the corresponding Lateral Certificates, from the description of the Water Rights and (ii) extend the Closing Date in order to accomplish the same. All other terms shall remain the same, including but not limited to the Purchase Price.

6.2 Closing. The Closing shall occur at 1:30 p.m. at the Title Company, or at such other time and place as may be mutually agreed upon by the Parties, fourteen (14) days after the expiration of the Governmental Approval Period or by mutual agreement at an earlier date.

6.3 Transactions at Closing.

A. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company, acting as escrow agent, the following documents duly executed and acknowledged where appropriate:

(1) A special warranty deed conveying the Water Rights free and clear of all liens and encumbrances in the form of Exhibit K.

(2) The original Ditch Company Certificates and Lateral Certificates.

(3) A stock assignment(s) transferring ownership (or partial ownership where applicable) of the Ditch Company Certificates and the Transferable Lateral Rights, and the proportional Water Rights represented thereby, in the form of Exhibits "M-1", "M-2", and "M-3".

(4) The Covenants in the form of Exhibits H-1, H-2, and H-3.

(5) A certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any certificates required pursuant to Colorado law.

(6) A statement of authority.

(7) A certificate as to Taxpayer Identification Number as required by law.

(8) The Water Leases in the form of Exhibits I-1, I-2, and I-3.

(9) The ROFR Agreement in the form of Exhibit G.

(10) Assignment of the Augmentation Plans.

(11) A closing statement executed by Seller.

(12) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

B. On or before the Closing Date, Greeley shall deliver to the Title Company, acting as escrow agent, the following:

(1) The Purchase Price, subject to credits and adjustments as herein provided, and such additional sums as are necessary to pay Greeley's share of closing costs, prorations and any fees as more particularly set forth herein.

(2) A special warranty deed(s) conveying the Land free and clear of all liens and encumbrances in the form of Exhibit L-1 and L-2.

(3) A bargain and sale deed(s) conveying the Transferable Water Rights in the form of Exhibit "N-1" and "N-2".

(4) Assignment and Bill of Sale for the Improvements and Ancillary Interests.

(5) Documentation in such form as may be satisfactory to Seller and the Title Company, evidencing Greeley's full authority and capacity to purchase the Property.

(6) Copy of written notice to JV Farms, Inc. (i) that the JV Farms Lease shall terminate on December 31, 2021, and (ii) that the second installment of the Annual Lease Amount, as defined therein, shall be due and payable to Seller on December 15, 2021.

(7) Copy of written notice to Double J Farms & Feeding, Inc. (i) that the Double J Farm Lease shall terminate on December 31, 2021 and (ii) that the second installment of the Annual Lease Amount, as defined therein, shall be due and payable to Seller on December 15, 2021.

(8) The Water Leases in the form of Exhibits I-1, I-2, and I-3.

(9) The ROFR Agreement in the form of Exhibit G.

(10) Assignment of the Augmentation Plans.

(11) A closing statement executed by Greeley.

(12) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Ditch Assessments. Seller agrees to fully pay and continue to pay any and all assessments, including special assessments, levied by the Company (or lateral or augmentation company) associated with and accruing to the Ditch Company Certificates (or Lateral Certificates) and Water Rights up to and including the Closing Date. At Closing, Greeley agrees to assume any such future obligations for assessments incurred after the Closing Date.

7.2 Lease Payments. Under the JV Farms Lease and the Double J Lease, the Annual Lease Amount (as defined under the applicable lease) for 2021 is due and payable in two installments. The first installment is due and payable on March 31, 2021, and the second

installment is due and payable on December 15, 2021. At Closing, the Annual Lease Amount for 2021 for each lease shall not be prorated. Instead, Greeley shall retain the full amount of the first installment and Seller shall be owed and entitled to retain the full amount of the second installment due and payable on December 15, 2021.

7.3 Closing Costs. Greeley shall pay for the cost of recording of the deed for the Water Rights, the Covenants, water stock transfer fees, the initial basic premium for the Title Policy on the Land, and one-half (1/2) of the Title Company closing costs. Seller shall pay for the cost of recording the deeds for the Land and Transferable Water Rights and one-half (1/2) of the Title Company closing costs and all title insurance endorsements on the Land. Each Party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any escrow fees to the Title Company.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Seller represents and warrants to Greeley as follows:

A. Ownership and Encumbrances. Seller is now and will remain, until the conclusion of the Closing, the lawful owner of the Water Rights and the Historic Property. To the best of Seller's knowledge, the Water Rights are free of any liens, encumbrances and third party claims except those of Greeley. From the Effective Date of this Agreement until the Closing, Seller shall not encumber the Water Rights and the Historic Property or any interest therein in any way nor grant any property or contract right relating to the Property or any other interests without the prior written consent of Greeley.

B. Litigation. To Seller's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Water Rights or other interests related thereto, or the Historic Property.

C. Contracts, Leases and Agreements. From the Effective Date of this Agreement until the Closing, unless accepted by Greeley in writing, Seller shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Water Rights by which Greeley would be obligated or liable to any third party.

D. Status. Seller has all requisite legal power and authority to own and convey the Property and perform all of the terms of this Agreement.

E. No Abandonment. The Water Rights have not been abandoned by Seller.

F. Compliance with Law. To the best of Seller's current actual knowledge, Seller has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Water Rights, and to Seller's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Seller which might adversely affect the Water Rights.

Seller shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date.

8.2 Greeley represents and warrants to Seller as follows:

A. Ownership and Encumbrances. Greeley is now and will remain, until the conclusion of the Closing, the lawful owner of the Land. To the best of Greeley's knowledge, the Land is free of any liens, encumbrances and third party claims except those of Seller. From the Effective Date of this Agreement until the Closing, and except for the Permitted Exceptions, Greeley shall not encumber the Land or any interest therein in any way nor grant any property or contract right relating to the Land or any other interests without the prior written consent of Seller.

B. Litigation. To Greeley's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Land or other interests related thereto.

C. Contracts, Leases and Agreements. From the Effective Date of this Agreement until the Closing, unless accepted by Seller in writing, Greeley shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Land by which Seller would be obligated or liable to any third party.

D. Status. Greeley has all requisite legal power and authority to own and convey the Property and perform all of the terms of this Agreement.

E. Compliance with Law. To the best of Greeley's current actual knowledge, Greeley has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Land, and to Greeley's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Greeley which might adversely affect the Land.

Greeley shall provide Seller with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date.

8.3 Water Rights Adjudication. The Parties acknowledge and agree that a change of the Water Rights and/or other water rights adjudications may be necessary to allow Greeley's use of the Property for its intended purpose. Unless this Agreement is terminated pursuant to the provisions herein, Seller agrees that it shall not oppose, but shall cooperate with Greeley, in any actions Greeley files in Water Court or administrative or other proceedings for approval of the use of the Water Rights as part of an application for new water rights (including direct flow or storage rights), changes of water rights, exchanges or plans for augmentation or substitution or in connection with the Water Rights. Seller shall not be required to file briefs in support of Greeley's application or take any affirmative action other than to appear and testify honestly about the Water Rights and provide any documentation of use or other relevant historical use information. The terms and provisions set forth in this Section 8.3 and the covenants and obligations arising therefrom shall survive the Closing and shall not be deemed merged into the closing documents.

8.4 Lease Renewals. The Parties agree that the Water Leases are a material part of the consideration to Seller. Due to the length of the Water Leases' terms, Seller has requested, and Greeley has agreed, that Greeley will be open to discussing new or renewal leases at the end of

the Water Leases' terms, if the water rights leased thereunder are available for continued irrigation use. Seller understands and acknowledges that the representations in this Section 8.4 are non-binding but are intended to represent the Seller's and Greeley's desire to negotiate a new or renewal lease in good faith at the end of the Water Leases' terms. Nothing in this Section 8.4 shall be interpreted to create an obligation to renew the Water Leases upon their expiration or termination.

ARTICLE 9
CONDITIONS TO CLOSING; REMEDIES

9.1 Seller's Conditions. The obligation of Seller to sell and convey the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Seller):

- A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley to the Closing.
- B. All of the actions by Greeley required by this Agreement shall have been completed.
- C. There shall be no uncured default by Greeley of any of their obligations under this Agreement.

9.2 Greeley's Conditions. The obligation of Greeley to acquire the Property and convey the Land under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Greeley):

- A. Satisfaction of the closing contingencies under Section 6.1.
- B. Delivery and execution by Seller of all items and other instruments required to be delivered by Seller to the Closing.
- C. All of the actions by Seller contemplated by this Agreement shall have been taken.
- D. There shall be no uncured default by Seller of any of its obligations under this Agreement.
- E. The representations and warranties made by Seller as specifically set forth herein shall be true and correct as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 9.3A(3) below.

9.3 Failure of Condition.

- A. Except as set forth in Section 9.3B below, in the event of a failure of any condition contained in Section 9.2, Greeley may in its sole discretion:

(1) Terminate this Agreement by notice to Seller, in which event (i) all funds deposited by Greeley under this Agreement as of such date shall be immediately returned to Greeley and (ii) all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Greeley may waive such default or condition and close the transaction; or

(3) If the failure of condition consists of a default by Seller which can be cured by action within the reasonable control of Seller, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance, damages, or both.

B. In the event of a failure of any condition contained in Section 9.1 above, Seller may in its sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event Seller shall (i) retain the Deposit as liquidated damages and (ii) all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Seller may waive such default or condition and close the transaction.

C. Seller hereby waives any rights it may have to specific performance in the event of a default by Greeley. Except for the giving of notices or the delivery of the Deposit or the Purchase Price, time being of the essence, neither Party shall be deemed in default hereunder unless such Party fails to cure such default within seven (7) days of written notice of default from the other Party.

9.4 Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement, Seller shall be entitled to terminate this Agreement and retain the amount of the Deposit described in Section 3.2 (“Specified Sum”), as liquidated damages. SELLER AND GREELEY ACKNOWLEDGE THAT SELLER’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SELLER’S DAMAGES.

ARTICLE 10 CONDEMNATION

If prior to Closing all or a “Material Part” (defined below) of the Property and/or Historic Property is subject to a proposed taking by any public authority, Seller shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Seller within fourteen (14) days after written notice thereof. If Greeley so elects, and following the return to Greeley of the Deposit, this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall be of no further

force and effect. If Greeley does not terminate this Agreement, or if the taking is as to a non-Material Part of the Property, Greeley shall accept title to the Property subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of Seller's rights to any condemnation award and Greeley shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A Material Part of the Property for purposes of this Article 10 shall mean a portion that would have a material adverse effect on Greeley's use of the Property as determined by Greeley in its good faith judgment.

ARTICLE 11 BROKERAGE

Seller and Greeley hereby warrant to each other that there are no real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. Seller agrees to indemnify Greeley and hold Greeley harmless from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by Greeley by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any third party claiming by, through or under Seller, excluding, however, any party claiming through Greeley, its successors or assigns. This obligation shall survive the Closing of this transaction.

ARTICLE 12 NOTICES

Any notice or other communication given by any of the Parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; or (iv) if an e-mail address is specified, on the date and at the time shown on the e-mail message if sent to the e-mail address specified below, with no bounce-back received within three (3) days:

If to Seller:

Longs Peak Dairy, LLC,
Attention: Wade Potberg
45490 County Road 39
Pierce, Colorado 80524
Telephone:
Email: wadepodtburg@gmail.com

With a copy to:

Otis & Bedingfield, LLC
Attention: Jeff Bedingfield
2725 Rocky Mountain Avenue, Suite 320
Loveland, CO 80538
Telephone: 970-663-7300
Email: jbedingfield@nocoattorneys.com

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
e-mail: adam.jokerst@greeleygov.com
cole.gustafson@greeleygov.com

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
e-mail: jerrae.swanson@greeleygov.com
dan.biwer@greeleygov.com

ARTICLE 13 MISCELLANEOUS

13.1 No Waiver of Governmental Immunity/No Third Party Beneficiary. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities Greeley or its officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended.

13.2 Time. Time is of the essence as to each provision of this Agreement and the performance of each Party's obligations hereunder.

13.3 Attorneys' Fees. If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement or to enforce any indemnity, the prevailing party shall be awarded its attorneys' fees and expenses, in addition to any other relief granted. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

13.4 No Waiver. No waiver by any Party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such Party of any other covenant or condition hereunder.

13.5 Entire Agreement. This Agreement contains the entire agreement among the Parties regarding the Property and supersedes all prior agreements, whether written or oral, among the Parties regarding the same subject, excluding only the closing documents executed in connection therewith. This Agreement may only be modified by mutual written agreement duly authorized and executed by the Parties.

13.6 Survival of Representations and Warranties. All representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of Seller and Greeley as set forth in this Agreement shall survive the Closing and consummation of this transaction contemplated by this Agreement until the complete discharge thereof. All warranties of title set forth in any deed or assignment delivered or made hereunder shall survive without limit.

13.7 Successors. Subject to Section 13.8 this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.8 Assignment. This Agreement is not assignable by Seller or Greeley without first obtaining the prior written approval of the other Party. No assignment shall relieve either of the Parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such Party.

13.9 Relationship of the Parties. The Parties acknowledge that neither Party is an agent for the other Party, and that neither Party shall or can bind or enter into agreements for the other Party.

13.10 Governing Law and Construction. This Agreement and the legal relations between the Parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

13.11 Possession. Seller shall deliver to Greeley possession of the Property, on the Closing Date, upon release from escrow of all items to be delivered by Greeley to the Closing, including, without limitation, the Purchase Price. Greeley shall deliver to Seller possession of the

Land, subject to the Permitted Exceptions, on the Closing Date, upon release from escrow of all items to be delivered by Seller to the Closing.

13.12 Review by Counsel. The Parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

13.13 Calendar Days. In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day.

13.14 Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by both Seller and Greeley. Executed copies of this Agreement may be delivered by electronic means. The Parties agree to accept and be bound by signatures hereto delivered by electronic means.

13.15 Seller 1031 Exchange. At the request of the Seller, Greeley will cooperate with the Seller in the achievement of a tax-deferred real estate exchange pursuant to Section 1031 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. A material part of the consideration to the Seller is Greeley's promise of cooperation. Greeley shall not be required to incur any additional liability or expense in connection with the Seller's tax-deferred exchange transaction nor shall Greeley be required to accept title to any real property other than the Property described hereinabove.

13.16 Water and Sewer Board Approval Required. GREELEY'S OBLIGATIONS UNDER THIS AGREEMENT ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE GREELEY WATER AND SEWER BOARD AND SUCH APPROVAL SHALL BE EVIDENCED BY THE SIGNATURE OF THE CHAIRMEN OF THE GREELEY WATER AND SEWER BOARD.

13.17 Acceptance. Upon execution and delivery of this Agreement by Seller and Greeley, as approved by the Board, this Agreement shall constitute an agreement to purchase the Property on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set opposite their respective signatures below.

[Signature Page Follows]

Date:

5-12-2021

Date:

APPROVED AS TO SUBSTANCE:

By

City Manager

AVAILABILITY OF FUNDS:

By

Director of Finance

RECOMMENDED:

By

Director of Water and Sewer

LONGS PEAK DAIRY, a Colorado limited liability company

By:

Name:

Title:

Wade Podtburg
Wade Podtburg
Managing Partner

THE CITY OF GREELEY, COLORADO,
a Colorado home rule municipal corporation

By

Name: Harold Evans

Title: Water and Sewer Board Chairman

APPROVED AS TO LEGAL FORM:

By

City Attorney

LONGS PEAK DAIRY, a Colorado limited liability company

Date: _____

By: _____

Name: _____

Title: _____

Date: 6/1/2021

THE CITY OF GREELEY, COLORADO,
a Colorado home rule municipal corporation

DocuSigned by:

By Harold Evans

Name: Harold Evans

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

DocuSigned by:
By [Signature]
D93D100AE64B4E6...
City Manager

APPROVED AS TO LEGAL FORM:

DocuSigned by:
By [Signature]
1E817506B21B4AA...
City Attorney

AVAILABILITY OF FUNDS:

DocuSigned by:
By [Signature]
F8DC883C0CB4394...
Director of Finance

RECOMMENDED:

By [Signature]
Director of Water and Sewer

EXHIBIT “A” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

Legal description of the Owl Creek Farm

PARCEL 1:

(Weld County Parcel No. 055135400002) – Lot D of Recorded Exemption No. 0551-35-4 RE-4888, recorded June 22, 2009 at Reception No. 3631749, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135400031) – Lot D of Recorded Exemption No. 0551-35-3 RE-4887, recorded June 22, 2009 at Reception No. 3631748, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135100008) – Lot D of Recorded Exemption No. 0551-35-2 RE-4692, recorded December 6, 2007 at Reception No. 3522044, being part of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135200025) – Lot D of Recorded Exemption No. 0551-35-2 RECX 15-0003, recorded May 14, 2015 at Reception No. 4107116, being part of the N ½ of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado; containing 121.57 acres more or less.

PARCEL 2:

Lots A, B and C of Recorded Exemption No. 0551-35-2 RE-4693 recorded December 6, 2007 at Reception No. 3522045, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Recorded Exemption No. 0551-35-2 RE-4692 recorded December 6, 2007 at Reception No. 3522044, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Amended Recorded Exemption No. 0551-35-4 AmRE-3698 recorded December 6, 2007 at Reception No. 3522043, being a portion of the South Half of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

EXHIBIT “B” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Ditch Company Certificates)

INCORPORATED UNDER THE LAWS OF
THE STATE OF COLORADO



NUMBER **6576** SHARES *** (2) TWO ***

The Water Supply & Storage Company

900 TOTAL AUTHORIZED SHARES COMMON STOCK - PAR VALUE \$100.00

* * LONGS PEAK DAIRY LLC AND PUBLIC TRUSTEE OF WELD COUNTY * *

This Certifies that * * FOR THE USE OF FARM CREDIT SERVICES OF THE MOUNTAIN PLAINS * * is the owner of * * * * * (2) TWO * * * * * Shares

The Water Supply & Storage Company

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed


 this 15th day of February A.D. 2011
Dana M. Parker John J. Mason
SECRETARY PRESIDENT

B102 BARNES CORPORATE SUPPLIES

INCORPORATED UNDER THE LAWS OF
THE STATE OF COLORADO



NUMBER **6581** SHARES *** ONE-HALF ***

The Water Supply & Storage Company

900 TOTAL AUTHORIZED SHARES COMMON STOCK - PAR VALUE \$100.00

* * LONGS PEAK DAIRY LLC AND PUBLIC TRUSTEE OF WELD COUNTY * *

This Certifies that * * FOR THE USE OF FARM CREDIT SERVICES OF THE MOUNTAIN PLAINS * * is the owner of * * * * * (1/2) ONE-HALF * * * * * Shares

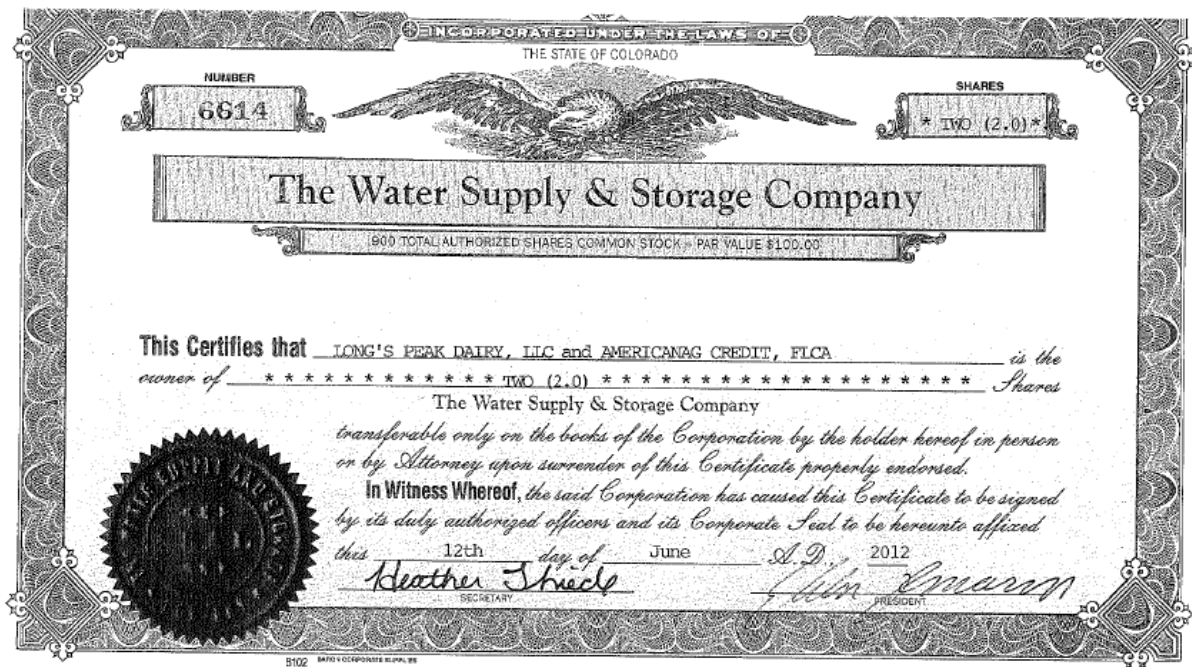
The Water Supply & Storage Company

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed


 this 8th day of MARCH A.D. 2011
Dana M. Parker John J. Mason
SECRETARY PRESIDENT

B102 BARNES CORPORATE SUPPLIES



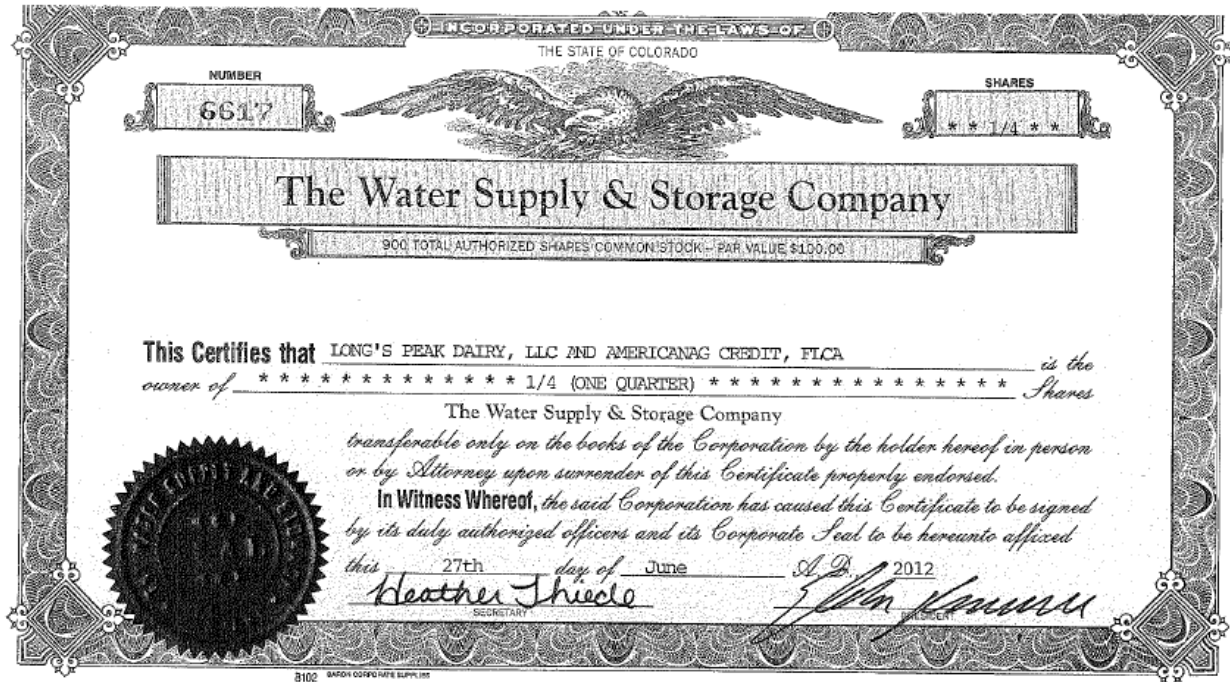


EXHIBIT “C” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Lateral Certificates)

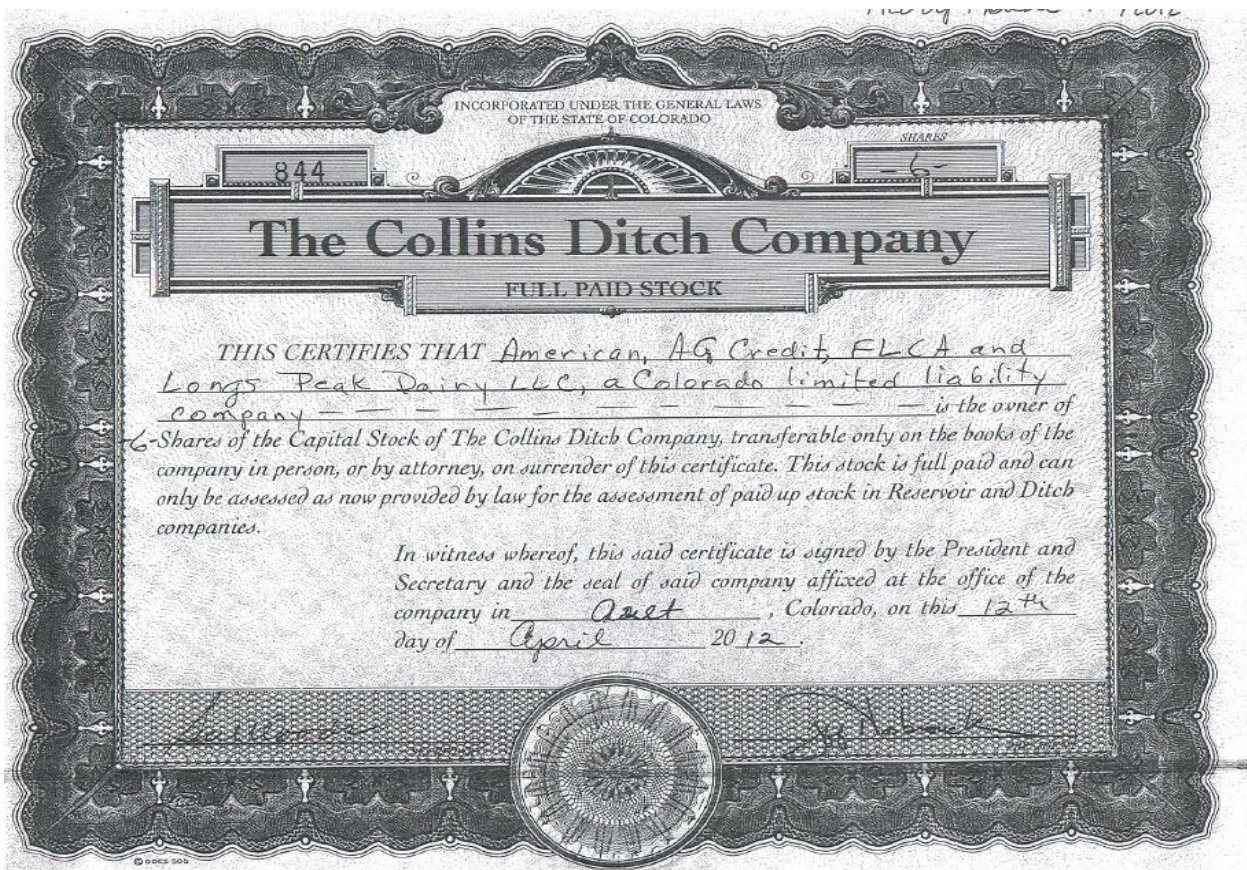


EXHIBIT “D” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See Attached WSSC Water Rights (i.e., Exhibit B from 07CW190))

EXHIBIT B
Water Supply Storage Company Water Rights

<u>Name</u>	<u>Amount</u>		<u>Source</u>	<u>Location</u> <u>10 40 160 Sec Twn Rge</u>	<u>Appropriation</u> <u>Date</u>	<u>Adjudication</u> <u>Date</u>	<u>Judicial</u> <u>Proceeding</u>
<u>Direct-Flow(Dist.3)</u>							
Larimer County Canal	10.76	cfs	CLP ¹	SW SE SW 13-8N-70W	1862/03/01	1882/04/11	Case 320 Transfer (1423 TT)
Larimer County Canal	13.89	cfs	CLP	SW SE SW 13-8N-70W	1864/09/15	1882/04/11	Case 320 Original (1423 TT)
Larimer County Canal	2.00	cfs	CLP	SW SE SW 13-8N-70W	1868/03/15	1882/04/11	Case 320 Original (2406 TT)
Larimer County Canal	2.67	cfs	CLP	SW SE SW 13-8N-70W	1868/13/15	1882/04/11	Case 320 Original (2818 TT)
Larimer County Canal	4.00	cfs	CLP	SW SE SW 13-8N-70W	1873/03/20	1882/04/11	Case 320 Original (2406 TT)
Larimer County Canal (Henry Smith)	7.23	cfs	CLP	SW SE SW 13-8N-70W	1878/04/01	1882/04/11	Case 320 Original
Larimer County Canal	463.00	cfs	CLP	SW SE SW 13-8N-70W	1881/04/25	1882/04/11	Case 320 Original
Larimer County Canal	246.45	cfs	CLP	SW SE SW 13-8N-70W	1914/09/28	1945/12/18	Case 5362 (84CW204) Supp.
<u>Storage (Dist. 3)</u>							
Chambers Lake Reservoir	3080.0	AF	Joe Wright Creek, Fall River Creek and Trap Creek	NE NE SE 6-7N-75W	1882/07/12	1886/10/12	Case 320 Original
WSSC Res. No. 2,3	689.0	AF	CLP	NE SE SW 14-8N-69W	1882/10/01	1904/12/09	Case 1591 Original
WSSC Res. No. 4	574.0	AF	WSSC Res. No. 2,3	SE NE SW 23-8N-69W	1882/10/01	1904/12/09	Case 1591 Original
WSSC Res. No. 1 (Rocky Ridge)	4726.0	AF	CLP	SW SE SW 11-8N-69W	1891/09/01	1904/12/09	Case 1591 Original
WSSC Res. No. 5 (Long Pond)	4037.0	AF	CLP	SW SE NW 31-8N-68W	1891/09/01	1904/12/09	Case 1591 Original
Lindemeier Lake	608.0	AF	Long Pond Res.	SW NW NE 6-7N-68W	1892/02/16	1904/12/09	Case 1591 Original
WSSC Res. No. 4	310.0	AF	Long Pond Res.	23-8N-69W	1892/02/16	1904/12/09	Case 1591 (W-7821-74) Original
WSSC Res. No. 4	422.0	AF	WSSC Res. No. 2,3	SE NE SW 23-8N-69W	1900/12/12	1904/12/09	Case 1951 Original
Black Hollow Res.	6458.0	AF	CLP	SE SE SE 34-8N-67W	1906/02/20	1922/04/22	Case 2031 Supp.
Chambers Lake Reservoir	3577.0	AF	Joe Wright Creek, Fall River Creek and Trap Creek	NE NE SE 6-7N-75W	1910/05/28	1922/04/22	Case 2031 Supp.
Kluver Res.	1562.0	AF	CLP	SW NE NW 23-8N-69W	1911/05/01	1945/12/18	Case 5362 Supp.
Black Hollow Res.	2158.0	AF	CLP	SE SE SE 34-8N-67W	1918/10/05	1945/12/18	Case 5362 Supp.
Long Draw Res	4201.0	AF	Long Pond Res.	NE NW SE 11-6N-75W	1922/06/05	1945/12/18	Case 5362 Supp.

EXHIBIT B
Water Supply Storage Company Water Rights

<u>Name</u>	<u>Amount</u>		<u>Source</u>	<u>Location</u> <u>10 40 160 Sec Twn Rge</u>	<u>Appropriation</u> <u>Date</u>	<u>Adjudication</u> <u>Date</u>	<u>Judicial</u> <u>Proceeding</u>
Chambers Lake Reservoir	2197.0	AF	Joe Wright Creek, Fall River Creek and Trap Creek	NE NE SE 6-7N-75W	1922/12/03	1945/12/18	Case 5362 Supp.
WSSC Res. No. 2,3	3615.0	AF	CLP	NE SE SW 14-8N-69W	1943/10/04	1953/09/10	Case 11217 Supp.
WSSC Res. No. 2,3	445.9	AF	CLP	NE SE SW 14-8N-69W	1943/10/04	1953/09/10	Case 11217 (W-112-74) Supp.
WSSC Res. No. 2,3	138.0	AF	CLP	NE SE SW 14-8N-69W	1943/10/04	1977/12/31	W-112-77 Supp.
Long Draw Res	6600.0	AF	CLP	NE NW SE 11-6N-75W	1965/08/31	1977/12/31	W-9322-78 (83CW126) Supp.
Trap Lake II	3800.0	AF	Trap Creek	NW NW SW 21-7N-75W	1982/06/16	1982/12/31	82CW289 Supp. - Cond.
<u>Transbasin</u>							
Chambers Lake Reservoir	11478.0	AF	Big Laramie River	6-7N-75W	1891/08/07	1896/10/30	Case 1247 Original
Laramie River Ditch (Skyline Ditch)	300.0	cfs	West Branch Laramie River	NE NE SW 14-8N-76W	1891/08/07	1896/10/30	Case 1247 Original (84CW204) Supp.
Cameron Pass Ditch	10.0	cfs	Michigan River	SE 2-6N-76W	1882/07/30	1902/04/23	Case 1519 Original
Cameron Pass Ditch	18.0	cfs	Michigan River	NW SE 2-7N-76W	1898/07/7	1902/05/23	Case 1519 Original
Grand River Ditch Alternate Point Alternate Point	524.6	cfs	Colorado River	NE SW NW 21-6N075W NW NE NW 28-5N-76W	1890/09/01	1906/08/11	Case 112 Original
Laramie River Tunnel ²	300.0	cfs	Big Laramie River	NW NE SE 29-6N-75W NE SW 7-8N-75W	1902/08/25	1914/02/20	Case 2725 Case 5993 (84CW204) Supp.
Rawah Ditch ²	225.0	cfs	Rawah Creek	NE NE SW 32-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Rawah and Lower Supply Ditch ²	275.0	cfs	Rawah Creek	SE SE SW 14-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
McIntyre Ditch ²	40.0	cfs	McIntyre Creek	SE NE NE 31-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 1 ^[2]	1050.0	AF	Rawah Creek	SE 7-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 2 ^[2]	1400.0	AF	Rawah Creek	SW 5-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 3 ^[2]	525.0	AF	Rawah Creek	NW 5-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 4 ^[2]	592.0	AF	Rawah Creek	SW 32-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 5 ^[2]	700.0	AF	Rawah Creek	NE 5-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.

EXHIBIT B
Water Supply Storage Company Water Rights

<u>Name</u>	<u>Amount</u>		<u>Source</u>	<u>Location</u> <u>10 40 160 Sec Twn Rge</u>	<u>Appropriation</u> <u>Date</u>	<u>Adjudication</u> <u>Date</u>	<u>Judicial</u> <u>Proceeding</u>
Link Lake No. 6 ^[2]	300.0	AF	Rawah Creek	SW 32-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 7 ^[2]	440.0	AF	Rawah Creek	NE 5-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 8 ^[2]	2000.0	AF	Rawah Creek	SW 4-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 9 ^[2]	574.0	AF	Rawah Creek	NE 6-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 10 ^[2]	425.0	AF	McIntyre Creek	NE 31-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 11 ^[2]	1148.0	AF	McIntyre Creek	SW 31-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 12 ^[2]	138.0	AF	Rawah Creek	NW 4-8N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 13 ^[2]	597.0	AF	Rawah Creek	NE 29-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Link Lake No. 14 ^[2]	597.0	AF	Spring Creek	NE 29-9N-76W	1902/08/25	1914/02/20	Case 2725 Case 5993 Supp.
Laramie Lake	340.0	AF	Drainage	SE NW 32-8N-75W	1890/07/01	1944/09/11	Case 5993 Supp.
Lost Lake	288.0	AF	Drainage	SW SE 31-8N-75W	1890/07/02	1944/09/11	Case 5993 Supp.
Lily Lake	178.0	AF	Drainage	SE NW 29-8N-78W	1912/07/01	1944/09/11	Case 5993 Supp.
<u>Seepage</u>							
Lind Reservoir ^[2]	54.9	AF	Seepage	SE NE SE 35-8N-68W	1881/04/21	1972/12/31	W-1748 W-1877 Supp.
WSSC Seepage A	2.0	cfs	Seepage	NE NE NW 20-8N-69W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage B	2.0	cfs	Seepage	SE SE SE 17-8N-69W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 1	5.0	cfs	Seepage	SW NW SW 4-8N-69W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 2	12.0	cfs	Seepage	SW NW NE 3-8N-69W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 2A	4.0	cfs	Seepage	NE NE SW 3-8N-69W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 2b	2.0	cfs	Seepage	NW SW SE 17-8N-68W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 3	20.0	cfs	Seepage	NE SW NW 14-8N-68W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 4	1.0	cfs	Seepage	NE NW SW 14-8N-68W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 6	2.0	cfs	Seepage	NW NW SW 31-8N-67W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 7	2.0	cfs	Seepage	NW SW SE 6-7N-67W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 7a	0.1	cfs	Seepage	SW NE SW 8-7N-67W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 7b	0.3	cfs	Seepage	SW SW SE 8-7N-67W	1881/04/21	1972/12/31	W-1877 Supp.

EXHIBIT B
Water Supply Storage Company Water Rights

<u>Name</u>	<u>Amount</u>		<u>Source</u>	<u>Location</u>	<u>Appropriation</u> <u>Date</u>	<u>Adjudication</u> <u>Date</u>	<u>Judicial</u> <u>Proceeding</u>
WSSC Seepage 7c	2.0	cfs	Seepage	10 40 160 Sec Twn Rge NW NW SW 13-7N-67W	1960/06/01	1972/12/31	W-1877 Supp.
WSSC Seepage 8	0.6	cfs	Seepage	NE SE SE 5-7N-66W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 9	1.0	cfs	Seepage	SE NE SE 5-7N-66W	1881/04/21	1972/12/31	W-1877 Supp.
WSSC Seepage 10	0.9	cfs	Seepage	SW NW SW 4-7N-66W	1881/04/21	1972/12/31	W-1877 Supp.

-
1. Cache la Poudre River
2. Partial Ownership

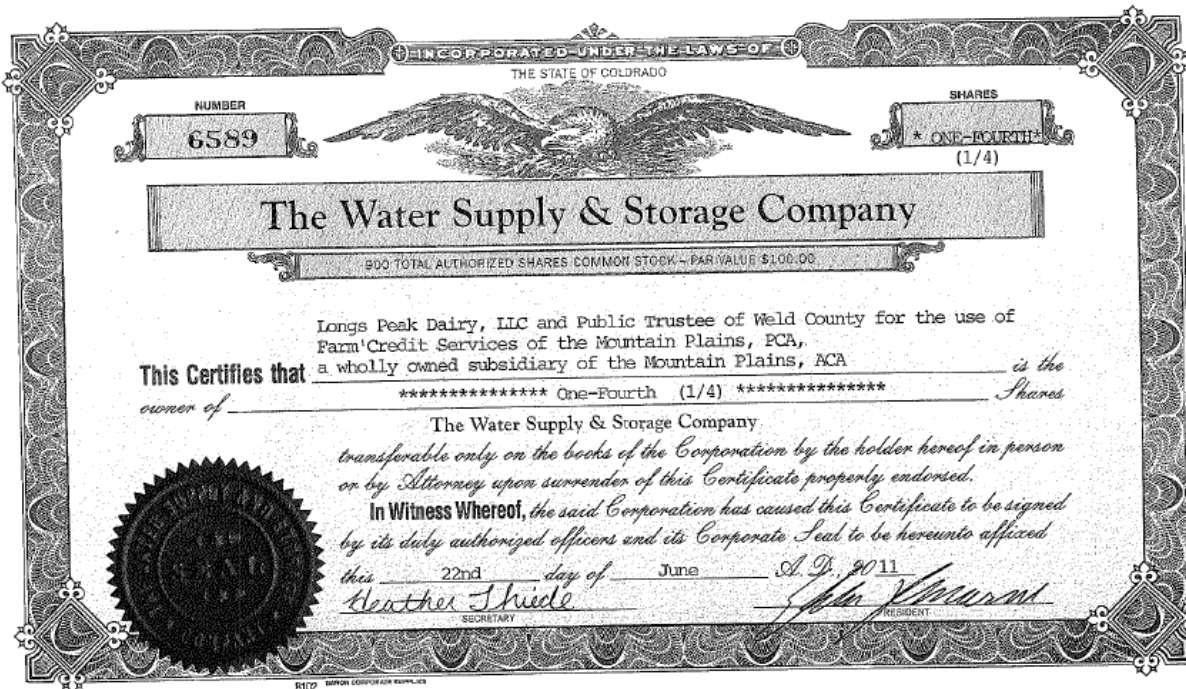
Attachment to Order - 2007CW190

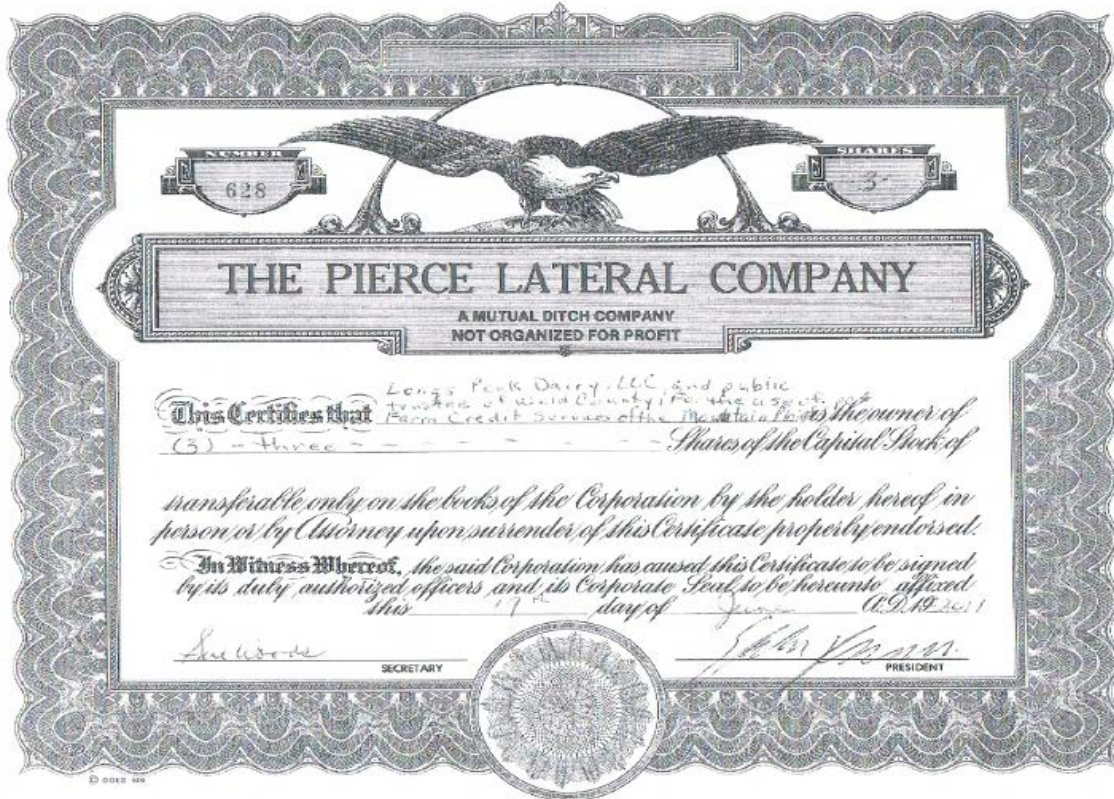
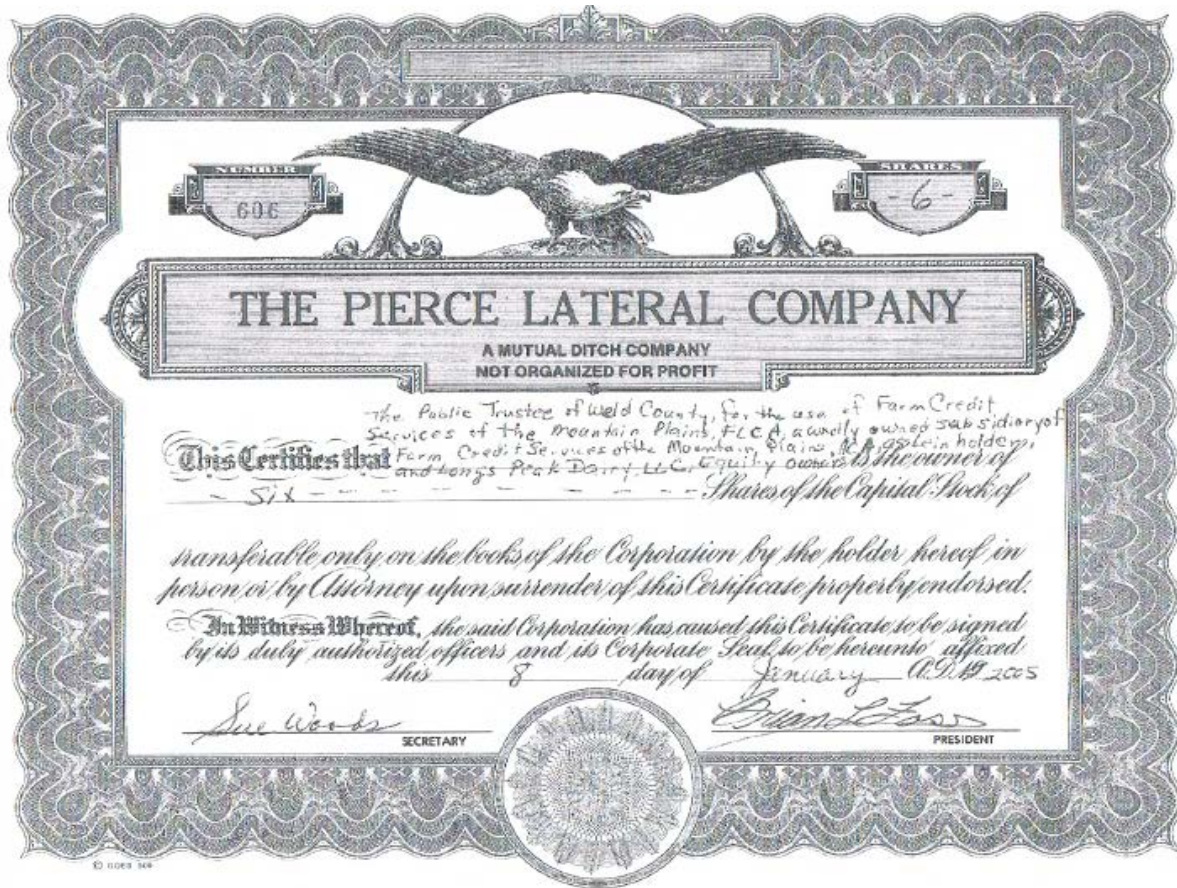
EXHIBIT “E” TO PURCHASE AND SALE AGREEMENT

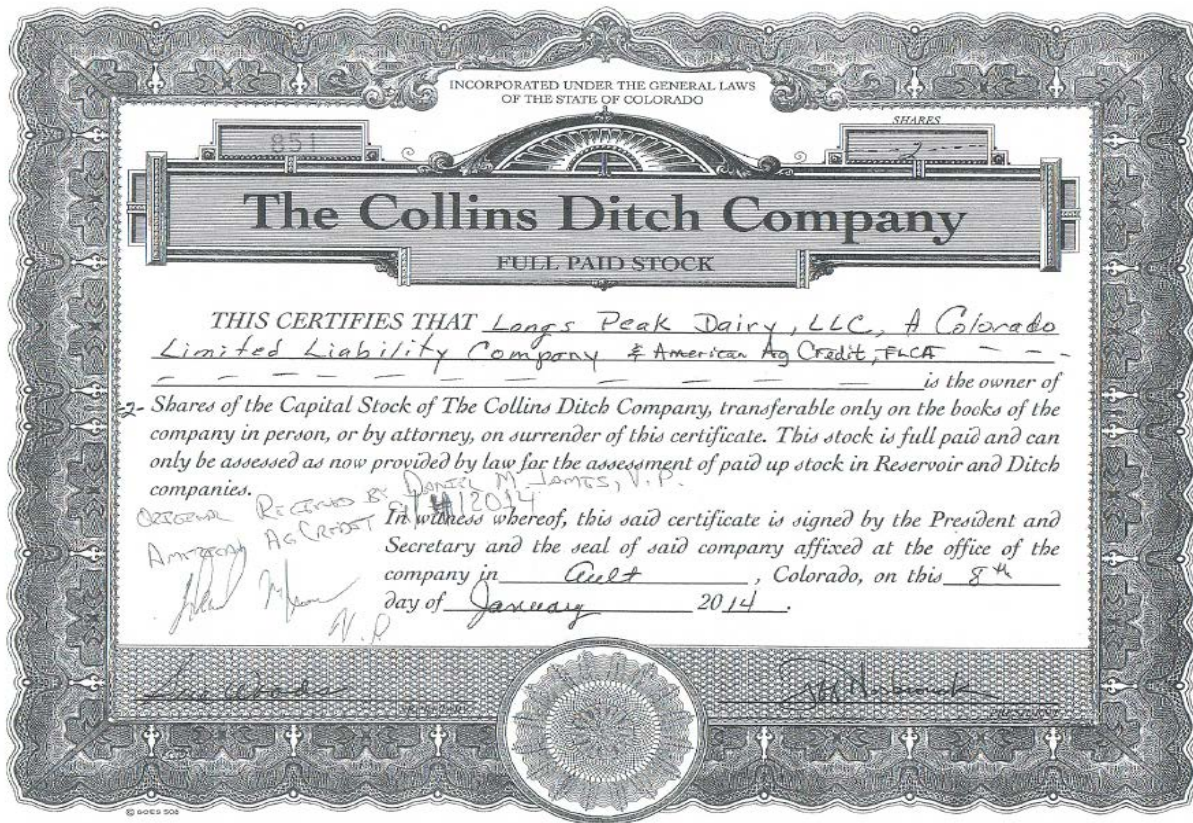
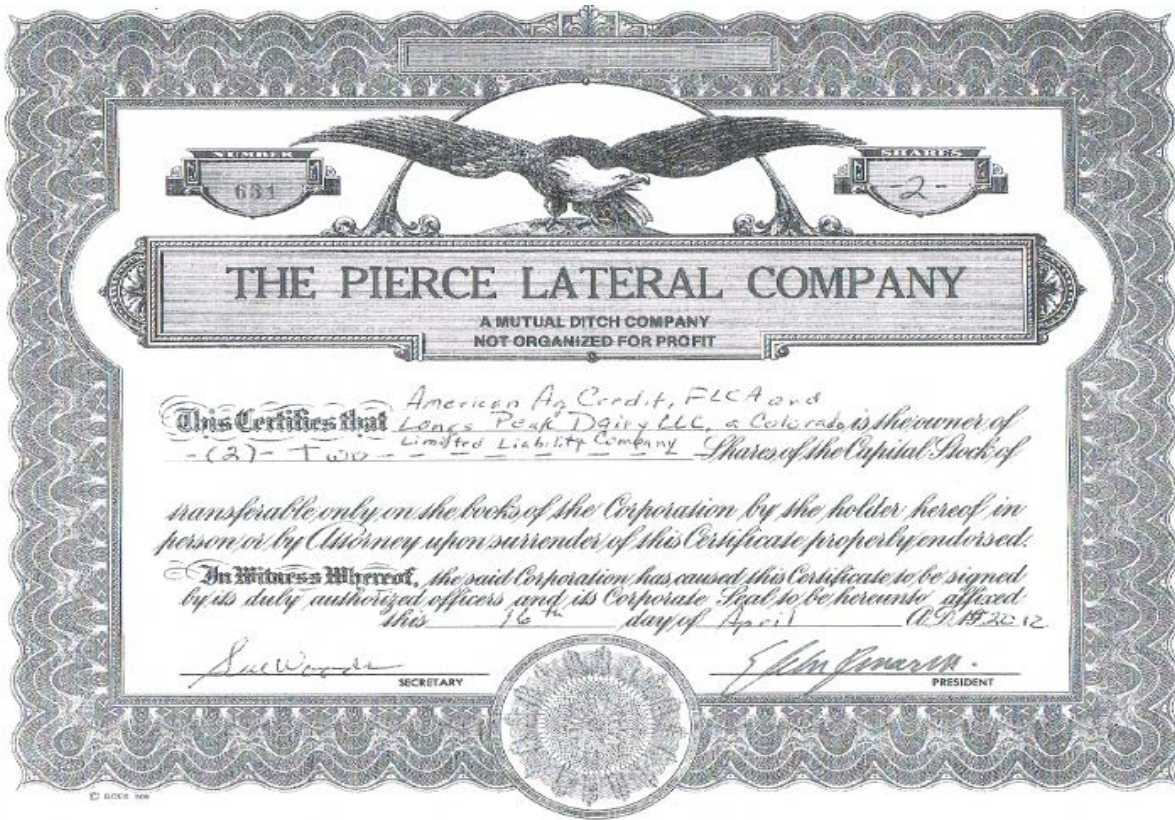
(Longs Peak Dairy)

(See attached copies of the ROFR Certificates)









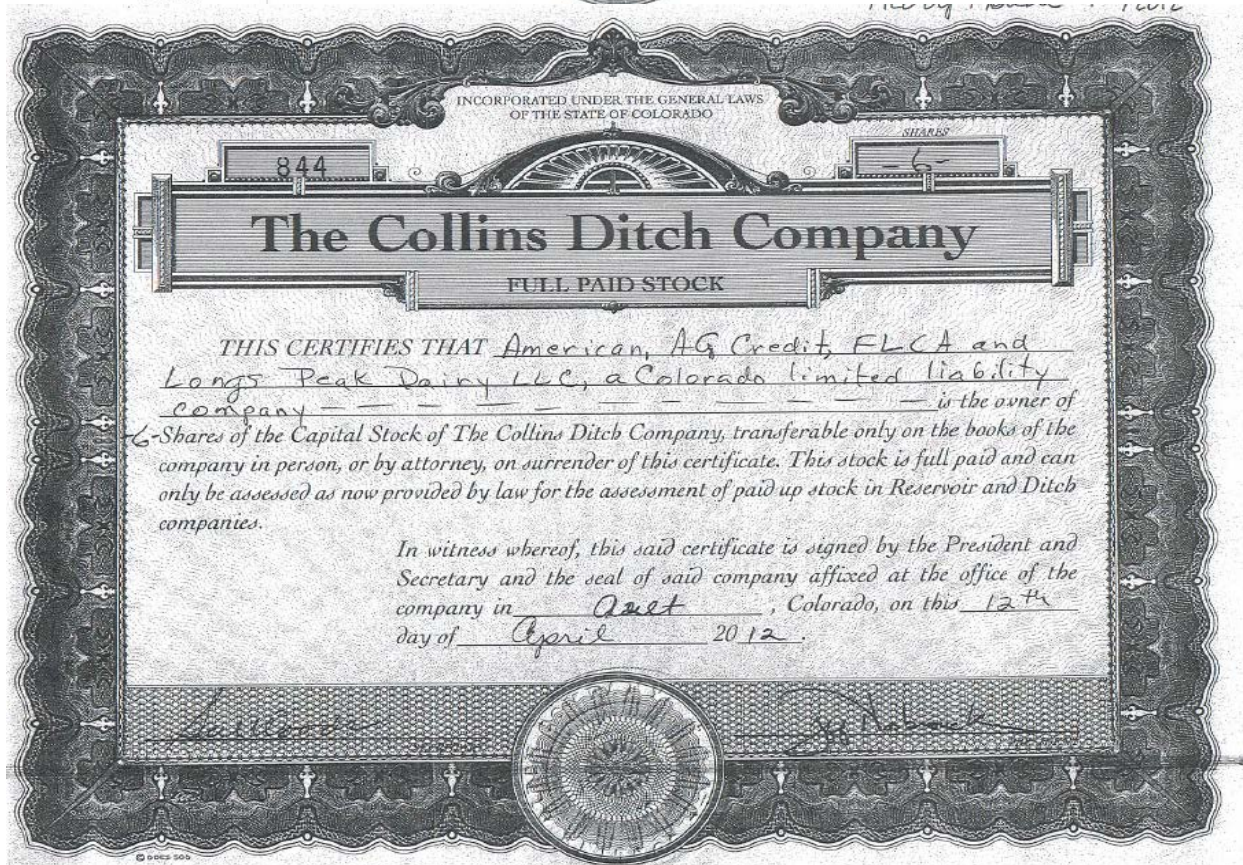




EXHIBIT "F-1" TO PURCHASE AND SALE AGREEMENT

(SELLER)

Legal description of the Varra Farm

The NE ¼ of Section 28, Township 28 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, EXCEPT that portion described in Deed Recorded April 11, 1910 in Book 270 at Page 543.

EXHIBIT "F-2" TO PURCHASE AND SALE AGREEMENT
(Longs Peak Dairy)

Legal description of the Hasbrouck Farm

PARCEL 1

The East 1/3 of the Northwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 52.631 acres more or less; and

PARCEL 2

Lot B of Recorded Exemption No. 0551-22-4-RE 620, recorded June 15, 1983 in Book 999 at Reception No. 01930309, being a part of the Southeast ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 151.967 acres more or less; and

PARCEL 3

Lot B of Amended Recorded Exemption No. 0551-22-3-AMRE 1907, recorded February 26, 2001 at Reception No. 2827884, being a part of the East ½ of the Southwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado;

Also described as: The East Half of the Southwest Quarter of Section 22, Township 8 North, Range 65 West of the 6th Principal Meridian, County of Weld, State of Colorado, EXCEPT that parcel described as Lot A of Amended Recorded Exception No. 0551-22-3-AMRE 1907 recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., and EXCEPT that parcel described as Subdivision Exemption No. 593, recorded July 10, 1996 in Book 1555 at Reception No. 2500336, County of Weld, State of Colorado. Said described parcel being 75.623 acres, more or less.

EXHIBIT “G” TO PURCHASE AND SALE AGREEMENT
(Longs Peak Dairy)

(See attached ROFR Agreement)

AGREEMENT FOR RIGHTS OF FIRST REFUSAL

This AGREEMENT FOR RIGHTS OF FIRST REFUSAL (“Agreement”) is entered into this ____ day of _____ 2021, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“Greeley”), and LONGS PEAK DAIRY, LLC, a Colorado limited liability company whose address is 45490 County Road 39, Pierce, Colorado 80650 (“Longs Peak”).

Recitals

WHEREAS, Greeley has acquired from Longs Peak certain water rights represented by shares of capital stock in The Water Supply and Storage Company and the associated lateral companies, pursuant to the Purchase and Sale Agreement executed by and between the parties on _____, 2021 (“Purchase Agreement”); and

WHEREAS, among those water rights acquired by Greeley pursuant to the Purchase Agreement are those certain rights represented by five and one-sixth (5-1/6) shares of capital stock in the Collins Ditch Company (previously evidenced by Stock Certificate No. 844, for five and one-sixth (5-1/6) shares of the total represented six (6) shares) (collectively “Longs Peak ROFR Lateral Rights”); and

WHEREAS, in addition to those water rights conveyed to Greeley pursuant to the Purchase Agreement, Longs Peak also owns those certain water rights represented by seven (7) shares of capital stock in The Water Supply and Storage Company (evidenced by Stock Certificate No. 6473 (for four (4) shares), Stock Certificate No. 6588 (for one and one-fourth (1-1/4) shares), Stock Certificate No. 6589 (for one-fourth (1/4) share), and Stock Certificate No. 6611 (for one and one-half (1-1/2) shares)); eleven (11) shares of capital stock in The Pierce Lateral Company (evidenced by Stock Certificate No. 606 (for six (6) shares), Stock Certificate No. 628 (for three (3) shares), and Stock Certificate No. 631 (for two (2) shares)); three and five-sixths (3-5/6) shares of capital stock in the Collins Ditch Company (evidenced by Stock Certificate No. 851 (for (2) shares), and Stock Certificate No. 863 (for one (1) share), together with the balance of Stock Certificate No. 844 (for five-sixth (5/6) of a share)), and one and five-sixths (1-5/6) shares of capital stock in the Lone Tree Lateral Company (evidenced by Stock Certificate No. 255 (for one (1) share), together with the balance of Stock Certificate No. 230 (for five-sixth (5/6) of a share)) (collectively “Greeley ROFR Water Rights”); and

WHEREAS, Greeley and Longs Peak agreed, as is more particularly described in the Purchase Agreement, to execute an agreement by which Longs Peak would grant to Greeley a right of first refusal to purchase the Greeley ROFR Water Rights and Greeley would grant to Longs Peak a right of first refusal to purchase the Longs Peak ROFR Lateral Rights; and

WHEREAS, Greeley and Longs Peak have reached an agreement regarding the mutual grants of the rights of first refusal described above, and desire to reduce that agreement to writing; and

WHEREAS, Greeley and Longs Peak agree that the bargained-for exchange of rights of first refusal described herein imposes mutual obligations on the parties to this Agreement, and constitutes good and valuable consideration independent of the consideration for the Purchase Agreement; and

NOW THEREFORE, for such good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Greeley and Longs Peak agree as follows.

Agreement

1. Incorporation of Recitals. Greeley and Longs Peak acknowledge that the foregoing recitals are true, correct, binding, and incorporated into this Agreement as though restated in their entireties.

2. Term of Agreement. The term of this Agreement begins on the date of mutual execution and expires (a) after a period of thirty (30) years, or (b) after the rights of first refusal granted herein have been exhausted by Greeley and Longs Peak against the Greeley ROFR Water Rights and the Longs Peak ROFR Lateral Rights in their entireties, whichever occurs sooner.

3. Greeley Right of First Refusal. Longs Peaks hereby grants to Greeley a right of first refusal to purchase the Greeley ROFR Water Rights upon the receipt by Longs Peak of any written bona fide purchase offer for the Greeley ROFR Water Rights. Upon its receipt of such an offer, Longs Peak shall notify Greeley of the offer within seven (7) days. Longs Peak shall provide such notice in writing and include a copy of the offer with the notice. Upon receipt of notice from Longs Peak that it received such an offer to purchase the Greeley ROFR Water Rights, Greeley shall have a vested option to purchase the subject Greeley ROFR Water Rights, and respond in writing within thirty-five (35) days to indicate whether it will purchase the Greeley ROFR Water Rights for the price listed in the offer, on the terms and substantially in the form of the purchase agreement attached hereto as Exhibit A. The failure of Greeley to respond within thirty-five (35) days shall be deemed an election not to exercise its right of first refusal.

4. Longs Peak Dairy Right of First Refusal. Greeley hereby grants to Longs Peak a right of first refusal to purchase the Longs Peak ROFR Lateral Rights upon the receipt by Greeley of any written bona fide purchase offer for the Longs Peak ROFR Lateral Rights. Upon its receipt of such an offer, Greeley shall notify Longs Peak of the offer within seven (7) days. Greeley shall provide such notice in writing and include a copy of the offer with the notice. Upon receipt of notice from Greeley that it received such an offer to purchase the Longs Peak ROFR Lateral Rights, Longs Peak shall have a vested option to purchase the subject Longs Peaks ROFR Lateral Rights, and respond in writing within thirty-five (35) days to indicate whether it will purchase the Longs Peak ROFR Lateral Rights on the terms of the offer received. The failure of Longs Peak to respond within thirty-five (35) days shall be deemed an election not to exercise its right of first refusal.

5. Scope of Rights of First Refusal. Greeley and Longs Peak acknowledge that the rights of first refusal granted by this Agreement are intended to apply to all or any portion of the Greeley ROFR Water Rights and the Longs Peak ROFR Lateral Rights, and that the rights of first refusal may be triggered and exercised on multiple occasions if separate offers are received for portions of either the Greeley ROFR Water Rights or the Longs Peak ROFR Lateral Rights. The failure by either party to exercise a right of first refusal as to a portion of the Greeley ROFR Water Rights or the Longs Peak ROFR Lateral Rights does not constitute a precedent nor a waiver of any future right of first refusal as to any other portion of the Greeley ROFR Water Rights or the Longs Peak ROFR Lateral Rights.

6. Notice. All notices to be given under this Agreement shall be sent both by (a) certified or registered mail, return receipt requested, or hand-delivered, and (b) electronic mail, using the addresses set forth below. Greeley and Longs Peak shall promptly notify the other party if the appropriate contact information for notice changes.

If to the City of Greeley:

City of Greeley Water and Sewer Department
Attention: Director of Water and Sewer
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631
Telephone: (970) 350-9812
Email: WSAdmin@greeleygov.com

With a copy to: City of Greeley City Attorney's Office
Attention: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631
Telephone: (970) 350-9757
Email: CityAttorney@greeleygov.com

If to Longs Peak Dairy, LLC: Longs Peak Dairy, LLC,
Attention: Wade Potberg
45490 County Road 39
Pierce, Colorado 80524
Telephone:
Email: wadepodtburg@gmail.com

With a copy to: Otis & Bedingfield, LLC
Attention: Jeff Bedingfield
2725 Rocky Mountain Avenue, Suite 320
Loveland, CO 80538
Telephone: 970-663-7300
Email: jbedingfield@nocoattorneys.com

7. Restriction on Assignment. Neither Greeley nor Longs Peak shall assign any right or interest in this Agreement without the prior written consent of the other party.

8. Binding on Successors and Assigns. Subject to the restriction set forth in paragraph 7 above, this Agreement is binding upon the successors in interest and permissible assigns of Greeley and Longs Peak.

9. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than Greeley and Longs Peak, or their respective permissible successors in interest.

10. Default by Longs Peak; Remedies. In the event that Longs Peak fails to comply with paragraph 3 above, such failure constitutes a default of this Agreement and Greeley shall be entitled to, in its sole discretion:

(a) Purchase all remaining Greeley ROFR Water Rights not conveyed by Longs Peak in the defaulting transaction, at one-half (½) of the price per share agreed to by Longs Peak in the defaulting transaction, on the terms and substantially in the form of the purchase agreement attached hereto as Exhibit A; or

(b) Terminate this Agreement with immediate effect and seek any and all available remedies, including, without limitation, damages and specific performance; or

(c) If Longs Peak conveys all remaining Greeley ROFR Water Rights in a defaulting transaction, terminate this Agreement with immediate effect and receive liquidated damages in the amount of twenty percent (20%) of the total compensation paid for the Greeley ROFR Water Rights in the defaulting transaction. Greeley and Longs Peak acknowledge that damages would be difficult to determine in such an event, and that this percentage is a reasonable estimate of damages.

11. Default by Greeley; Remedies. In the event that Greeley fails to comply with paragraph 4 above, such failure constitutes a default of this Agreement and Longs Peak shall be entitled to, in its sole discretion:

(a) Purchase all remaining Longs Peak ROFR Lateral Rights not conveyed by Greeley in the defaulting transaction, at one-half (½) of the price per share agreed to by Greeley in the defaulting transaction; or

(b) Terminate this Agreement with immediate effect and seek any and all available remedies, including, without limitation, damages and specific performance; or

(c) If Greeley conveys all remaining Longs Peak ROFR Lateral Rights in a defaulting transaction, terminate this Agreement with immediate effect and receive liquidated damages in the amount of twenty percent (20%) of the total compensation paid for the Longs Peak ROFR Lateral Rights in the defaulting transaction. Greeley and Longs Peak acknowledge that damages would be difficult to determine in such an event, and that this percentage is a reasonable estimate of damages.

12. Recovery of Costs and Fees; Waiver. In addition to such remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action. The failure by either party to declare a default does not establish precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement. Any such waiver must be made explicitly in a duly authorized writing.

13. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado.

14. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties, unless such interpretation would frustrate the purpose of the Agreement.

15. Integration and Amendment. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and Longs Peak with respect to the subject matter herein. No representations, negotiations, or warranties, express or implied, exist between Greeley and Longs Peak except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by Greeley and Longs Peak.

16. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic means. The parties agree to accept and be bound by electronic signatures.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement for Rights of First Refusal on the date first set forth above.

CITY OF GREELEY,
a Colorado home rule municipal corporation
acting by and through its Water Enterprise

By: _____
Director of Water and Sewer

Date: _____

LONGS PEAK DAIRY, LLC
a Colorado limited liability company

By: _____
Name: _____
Title: _____

Date: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021
by _____, as _____ of Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

EXHIBIT "A" TO RIGHT OF FIRST REFUSAL AGREEMENT

PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY (Longs Peak Dairy, LLC)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the Effective Date (as defined in Section 1.2 below) by and between LONGS PEAK DAIRY, LLC, a Colorado limited liability company ("Seller"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE ("Greeley") (Seller and Greeley each being a "Party" and collectively the "Parties").

RECITALS

A. Seller owns real property located in Weld County, Colorado, legally described on Exhibit "A-1" and depicted on Exhibit "A-2", attached hereto and incorporated herein by reference ("Land");

B. Seller is the sole owner of water and water rights represented by [] shares of stock in The Water Supply and Storage Company (the "Ditch Company"), evidenced by Stock Certificate No. [] issued in the name of Seller (the "Certificate"), which have historically been delivered through the Larimer County Canal;

C. To the best of the Parties' knowledge and belief, said Certificate represents ownership of and the right to divert and use water under and a proportional interest in the water rights listed below (the "Water Rights"); and

Appropriation Date	Amount (c.f.s.)	Source	Case No.	Adjudication Date

D. Seller desires to sell, and Greeley desires to purchase, the Property (defined below).

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, Seller and Greeley hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

In addition to words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings:

- 1.1 “*Agreement*” means this purchase and sale agreement.
- 1.2 “*Board*” means the Greeley Water and Sewer Board.
- 1.3 “*Certificate*” has the meaning given in Recital B.
- 1.4 “*Closing*” means the closing of this transaction.
- 1.5 “*Closing Date*” means the date of the Closing.
- 1.6 “*Company*” means The Water Supply and Storage Company.
- 1.7 “*Covenants*” means the Restrictive Covenants-No Irrigation and Revegetation, in the form of Exhibit B attached hereto and incorporated herein.
- 1.8 “*Effective Date*” means the date upon which the last party hereunder signs this Agreement in accordance with Sections 13.15 and 13.16 below.
- 1.9 “*Deposit*” has the meaning given in Section 3.2.
- 1.10 “*Governmental Approval Period*” has the meaning given in Section 6.1.A.
- 1.11 “*Inspections*” has the meaning given in Section 5.1.A.
- 1.12 “*Inspection Period*” has the meaning given in Section 5.1.A.
- 1.13 “*Land*” means the real property defined under Recital A above.
- 1.14 “*Material Part*” means a portion of the Property that would have a material adverse effect on Greeley’s use of the Property as determined by Greeley in its good faith judgment.
- 1.15 “*Off-Record Documents*” has the meaning given in Section 4.1.C.
- 1.16 “*Property*” means the Water Rights, together with Covenants on the Land.
- 1.17 “*Purchase Price*” has the meaning given in Section 3.1.
- 1.18 “*Specified Sum*” has the meaning given in Section 9.4.

1.19 “*Title Commitment*” means a commitment for an owner’s policy of title insurance.

1.20 “*Title Company*” means Land Title Guarantee Company.

1.21 “*Title Documents*” has the meaning given in Section 4.1.A.

1.22 “*Water Rights*” has the meaning given in Recital B. above.

ARTICLE 2 SALE OF PROPERTY

2.1 Seller agrees to sell, and Greeley agrees to buy, on the terms and conditions set forth in this Agreement, the Property.

2.2 Exclusions. The Property does not include, and Seller expressly excepts and reserves, the following:

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Property (“Purchase Price”) shall be _____ dollars [**\$0,000.00**].

3.2 Deposit and Release of Deposit. Within fourteen (14) days following the Effective Date of this Agreement, Greeley shall transfer and deposit with the Title Company _____ dollars [**\$0,000.00**] (“Deposit”). The Deposit shall be fully refundable to Greeley at any time prior to the expiration of the Inspection Period (defined below) if Greeley is not satisfied with the Property and shall be subject to return to Greeley either prior to or after the expiration of the Inspection Period upon termination of this Agreement pursuant to Section 5.2, Section 6.1, Section 9.3 and 10 below. The Deposit shall be deducted from the Purchase Price at Closing as provided in Section 3.3 below.

3.3 Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing; and (iii) plus or minus any prorations or credits, shall be paid at Closing by cashier's check, wire transfer or other immediately available funds.

ARTICLE 4 TITLE

4.1 Within fourteen (14) days after the Effective Date of this Agreement, Seller shall provide the following to Greeley for review:

A. A commitment for an owner’s policy of title insurance (“Title Commitment”) issued by the Title Company covering the Land in the amount of the Purchase Price, with such Title Commitment setting forth the status of title to the Land and showing the Title Company’s search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the

Land (the copies of all recorded documents in the Title Commitment are collectively referred to as “Title Documents”).

B. A fully executed historical consumptive use affidavit and questionnaire in the form of Exhibit “C” attached hereto and incorporated herein.

C. To the extent the same exist, request true and correct copies of all Company documents related to the Water Rights, including but not limited to, the delivery records and share trace. Seller agrees that Company documents, including but not limited to the share trace, are a necessary component of Greeley’s inspection activities. If the Company provides such documents less than seven (7) days before the Inspection Period (defined below), then the Inspection Period shall be automatically extended for an additional fourteen (14) days.

D. To the extent the same exist, true and correct copies of all: (i) documents that relate to the title, use, quantity, quality and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Seller; (ii) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Water Rights and/or Land; and (iii) any engineering, investigation or inspection document or reports related to the Water Rights and/or Land, (collectively referred to as “Off-Record Documents”).

4.2 Condition and Vesting of Title. At Closing, Seller shall convey the Water Rights to Greeley by special warranty deed, in the form attached as Exhibit “D” free and clear of all liens and encumbrances.

4.3 Title Insurance. The purpose of the Title Commitment is to enable Greeley to conduct the title review described in Article 5 below, and said Title Commitment shall be updated as necessary up to the Closing; however, neither Seller nor Greeley shall have any obligation under this Agreement to purchase a title insurance policy after Closing. Greeley may elect to acquire this insurance (limited to the Covenants attached hereto as Exhibit “B”) at its expense.

ARTICLE 5 INSPECTION PERIOD

5.1 Inspections.

A. Inspection Period; Right to Inspect. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the sixty-third (63rd) day thereafter (“Inspection Period”), unless automatically extended in accordance with Section 4.1.C. above, Greeley and its authorized agents, representatives and consultants shall be entitled to: (i) enter upon the Land at all reasonable times, to perform such tests or inspections, as Greeley deems desirable, to allow Greeley to evaluate the Water Rights and the condition and use of the Property; (ii) contact and interview the managers, members, employees and agents of Seller to assist Greeley in determining the historical use of the Water Rights; (iii) contact the officers, directors, attorneys, and shareholders of the Company to inspect any Company records and/or determine under what conditions the Company will approve a change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be

obtained by Greeley, pursuant to the bylaws of the Company or other applicable law (collectively referred to as “Inspections”). Seller agrees to cooperate with Greeley to facilitate such interviews and/or the signing of any affidavits of use of the Water Rights by Seller or to facilitate such contact and/or request for information or determination by the Company. Greeley shall bear all costs of the Inspections. Seller agrees to reasonably cooperate with any such Inspections made by or at Greeley’s direction.

B. Conditions of Access. Greeley and its authorized agents, representatives and consultants (i) shall not unreasonably interfere with the operation and maintenance of the Land; (ii) shall comply with all reasonable requirements imposed upon them in connection with such inspection by Seller; (iii) shall not injure or otherwise cause bodily harm to Seller, their agents, contractors or employees; (iv) shall promptly pay when due the costs of all Inspections done with regard to the Property; (v) shall not permit any liens to attach to the Land by reason of the exercise of its rights hereunder; and (vi) shall restore the Land as nearly as practicable to substantially the same condition in which the Land was found before any such Inspections were undertaken. Notwithstanding anything in this Agreement to the contrary, Greeley shall not be permitted to perform any invasive tests on the Land without Seller’s prior written consent, which consent may be withheld in Seller’s sole discretion.

C. Deadlines. The table below contains a non-exclusive list of the dates and deadlines for this Agreement.

Section	Deadline	Date
§ 3.2	Deposit	Fourteen (14) days following the Effective Date
§ 4.1	Title Documents	Fourteen (14) days following the Effective Date
§ 4.1	Off-Record Documents	Fourteen (14) days following the Effective Date
§ 5.1	Inspection Period	Sixty-third (63rd) day following the Effective Date unless automatically extended in accordance with Section 4.1.C.
§ 5.2	Objections	On or before the expiration of the Inspection Period
§ 6.1.A	Governing Body Approval	Twenty-eight (28) days after the expiration of the Inspection Period (“ <u>Governmental Approval Period</u> ”)
§ 6.2	Closing Date	Fourteen (14) days after the expiration of the Governmental Approval Period
§ 9.3.C.	Default Cure Period	Within seven (7) days of written notice of default from the other Party
§10	Condemnation	Within fourteen (14) days after written notice

5.2 Objections. If during the Inspection Period, Greeley shall, for any reason, in Greeley’s sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Property or its Inspections relating thereto, including, but not limited to, the following items, Greeley shall be entitled to terminate this Agreement by giving written notice to Seller on or before the expiration of the Inspection Period, whereupon the Deposit shall be returned to Greeley and all provisions of this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall terminate:

A. Matters disclosed in (i) the Title Documents or (ii) the Off-Record Documents.

B. Greeley's ability to change the Water Rights for municipal use.

If written notice of termination is not given by Greeley to the Seller prior to the expiration of the Inspection Period, the Deposit shall not be refunded to the Greeley if, for any reason other than as a result of a default by Seller or pursuant to Section 6.1, Section 9.3 or Article 10, the Closing of this transaction does not occur.

ARTICLE 6 CLOSING

CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies. The obligations of Greeley to purchase the Property are subject to satisfaction of the following contingencies:

A. Governing Body Approval. The Board's authorization to close on the Property is contingent upon approval given within twenty-eight (28) days after the expiration of the Inspection Period ("Governmental Approval Period"). In the event that the Board has not authorized Closing on the Property prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by Greeley to Seller, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

6.2 Closing. The Closing shall occur at 1:30 p.m. at the Title Company, or at such other time and place as may be mutually agreed upon by the Parties, fourteen (14) days after the expiration of the Governmental Approval Period or by mutual agreement at an earlier date.

6.3 Transactions at Closing.

A. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company, acting as escrow agent, the following documents duly executed and acknowledged where appropriate:

(1) A special warranty deed conveying the Water Rights free and clear of all liens and encumbrances in the form of Exhibit D.

(2) The original Certificate.

(3) A stock assignment(s) transferring ownership of the Certificate and the Water Rights in the form of Exhibit E.

(4) The Covenants.

(5) A certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any certificates required pursuant to Colorado law.

(6) A statement of authority designating the persons who are authorized to execute the special warranty deed, the stock assignments and all other applicable documents on behalf of the Seller.

(7) A certificate as to Taxpayer Identification Number as required by law.

(8) A closing statement executed by Seller.

(9) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

B. On or before the Closing Date, Greeley shall deliver to the Title Company, acting as escrow agent, the following:

(1) The Purchase Price, subject to credits and adjustments as herein provided, and such additional sums as are necessary to pay Greeley's share of closing costs, prorations and any fees as more particularly set forth herein.

(2) Documentation in such form as may be satisfactory to Seller and the Title Company, evidencing Greeley's full authority and capacity to purchase the Property.

(3) A closing statement executed by Greeley.

(4) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

ARTICLE 7

PRORATIONS; CLOSING COSTS

7.1 Ditch Assessments. Seller agrees to fully pay and continue to pay any and all assessments, including special assessments, levied by the Company associated with and accruing to the Certificates and Water Rights up to and including the Closing Date. At Closing, Greeley agrees to assume any such future obligations for assessments incurred after the Closing Date.

7.2 Closing Costs. Greeley shall pay for the cost of recording of the deed, the Covenants, water stock transfer fees and one-half (1/2) of the Title Company closing costs. Seller shall pay one-half (1/2) of the Title Company closing costs. Each Party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any escrow fees to the Title Company.

ARTICLE 8
REPRESENTATIONS AND WARRANTIES.

8.1 Seller represents and warrants to Greeley as follows:

A. Ownership and Encumbrances. Seller is now and will remain, until the conclusion of the Closing, the lawful owner of the Water Rights. To the best of Seller's knowledge, the Water Rights are free of any liens, encumbrances and third party claims except those of Greeley. From the Effective Date of this Agreement until the Closing, and except for the Permitted Exceptions defined herein, Seller shall not encumber the Water Rights or any interest in any way nor grant any property or contract right relating to the Property or any other interests without the prior written consent of Greeley.

B. Litigation. To Seller's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Water Rights or other interests related thereto.

C. Contracts, Leases and Agreements. From the Effective Date of this Agreement until the Closing, unless accepted by Greeley in writing, Seller shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Water Rights by which Greeley would be obligated or liable to any third party.

D. Status. Seller has all requisite legal power and authority to own and convey the Property and perform all of the terms of this Agreement.

E. No Abandonment. The Water Rights have not been abandoned by Seller.

F. Compliance with Law. To the best of Seller's current actual knowledge, Seller has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Water Rights, and to Seller's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Seller which might adversely affect the Water Rights.

Seller shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date.

8.2 Water Rights Adjudication. The Parties acknowledge and agree that a change of Water Rights and/or other water rights adjudications may be necessary to allow Greeley's use of the Property for its intended purpose. Unless this Agreement is terminated pursuant to the provisions herein, Seller agrees that it shall not oppose, but shall cooperate with Greeley, in any actions Greeley files in Water Court or administrative or other proceedings for approval of the use of the Water Rights as part of an application for new water rights (including direct flow or storage rights), changes of water rights, exchanges or plans for augmentation or substitution or in connection with the Water Rights. Seller shall not be required to file briefs in support of Greeley's application or take any affirmative action other than to appear and testify honestly about the Water Rights and provide any documentation of use or other relevant historical use information. The terms and provisions set forth in this Section 8.2. and the covenants and

obligations arising therefrom shall survive the Closing and shall not be deemed merged into the closing documents.

ARTICLE 9
CONDITIONS TO CLOSING; REMEDIES

9.1 Seller's Conditions. The obligation of Seller to sell and convey the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Seller):

A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley to the Closing.

B. All of the actions by Greeley required by this Agreement shall have been completed.

C. There shall be no uncured default by Greeley of any of their obligations under this Agreement.

9.2 Greeley's Conditions. The obligation of Greeley to acquire the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Greeley):

A. The appropriation of funds by the Greeley City Council for the Purchase Price.

B. Satisfaction of the closing contingencies under Section 6.1.

C. Delivery and execution by Seller of all items and other instruments required to be delivered by Seller to the Closing.

D. All of the actions by Seller contemplated by this Agreement shall have been taken.

E. There shall be no uncured default by Seller of any of its obligations under this Agreement.

F. The representations and warranties made by Seller as specifically set forth herein shall be true and correct as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 9.3A(3) below.

9.3 Failure of Condition.

A. Except as set forth in Section 9.3B below, in the event of a failure of any condition contained in Section 9.2, Greeley may in its sole discretion:

(1) Terminate this Agreement by notice to Seller, in which event:
(a) all funds deposited by Greeley under this Agreement as of such date shall be immediately

returned to Greeley; and (b) all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley, and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Greeley may waive such default or condition and close the transaction; or

(3) If the failure of condition consists of a default by Seller which can be cured by action within the reasonable control of Seller, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance, damages, or both.

B. In the event of a failure of any condition contained in Section 9.1 above, Seller may in its sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event Seller shall retain the Deposit as liquidated damages and all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley, and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Seller may waive such default or condition and close the transaction.

C. The Seller hereby waives any rights it may have to specific performance in the event of a default by Greeley. Except for the giving of notices or the delivery of the Deposit or the Purchase Price, time being of the essence, neither Party shall be deemed in default hereunder unless such Party fails to cure such default within seven (7) days of written notice of default from the other Party.

9.4 Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement, Seller shall be entitled to terminate this Agreement and retain the amount of the Deposit described in Section 3.2 ("Specified Sum"), as liquidated damages. SELLER AND GREELEY ACKNOWLEDGE THAT THE SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF THE SELLER'S DAMAGES.

ARTICLE 10 CONDEMNATION

If prior to Closing all or a "Material Part" (defined below) of the Property and/or Land is subject to a proposed taking by any public authority, Seller shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Seller within fourteen (14) days after written notice thereof. If Greeley so elects, and following the return to Greeley of the Deposit, this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall be of no further force and effect. If Greeley does not terminate this Agreement, or if the taking is as to a non-Material Part of the Property, Greeley shall accept title to the Property subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of Seller's rights to any

condemnation award and Greeley shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A Material Part of the Property for purposes of this Article 10 shall mean a portion that would have a material adverse effect on Greeley's use of the Property as determined by Greeley in its good faith judgment.

ARTICLE 11
BROKERAGE

Seller and Greeley hereby warrant to each other that there are no real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. Seller agrees to indemnify Greeley and hold Greeley harmless from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by Greeley by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any third party claiming by, through or under Seller, excluding, however, any party claiming through Greeley, its successors or assigns. This obligation shall survive the Closing of this transaction.

ARTICLE 12
NOTICES

Any notice or other communication given by any of the Parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; or (iv) if an e-mail address is specified, on the date and at the time shown on the e-mail message if sent to the e-mail address specified below, with no bounce-back received within three (3) days:

If to Seller:

Longs Peak Dairy, LLC,
Attention: Wade Potberg
45490 County Road 39
Pierce, Colorado 80524
Telephone:
Email: wadepodtburg@gmail.com

With a copy to:

Otis & Bedingfield, LLC
Attention: Jeff Bedingfield
2725 Rocky Mountain Avenue, Suite 320
Loveland, CO 80538
Telephone: 970-663-7300
Email: jbedingfield@nocoattorneys.com

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Email:

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Email:

ARTICLE 13 MISCELLANEOUS

13.1 No Waiver of Governmental Immunity/No Third Party Beneficiary. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities Greeley or its officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended.

13.2 Time. Time is of the essence as to each provision of this Agreement and the performance of each Party's obligations hereunder.

13.3 Attorneys' Fees. If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement or to enforce any indemnity, the prevailing party shall be awarded its attorneys' fees and expenses, in addition to any other relief granted. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

13.4 No Waiver. No waiver by any Party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such Party of any other covenant or condition hereunder.

13.5 Entire Agreement. This Agreement contains the entire agreement among the Parties regarding the Property and supersedes all prior agreements, whether written or oral, among the Parties regarding the same subject, excluding only the Easement Purchase Agreement and the closing documents executed in connection therewith. This Agreement may only be modified by mutual written agreement duly authorized and executed by the parties.

13.6 Survival of Representations and Warranties. All representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of Seller and Greeley as set forth in this Agreement shall survive the Closing and consummation of this transaction contemplated by this Agreement until the complete discharge thereof. All warranties of title set forth in any deed or assignment delivered or made hereunder shall survive without limit.

13.7 Successors. Subject to Section 13.8, this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.8 Assignment. This Agreement is not assignable by Seller or Greeley without first obtaining the prior written approval of the other Party. No assignment shall relieve either of the Parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such Party.

13.9 Relationship of the Parties. The Parties acknowledge that neither Party is an agent for the other Party, and that neither Party shall or can bind or enter into agreements for the other Party.

13.10 Governing Law and Construction. This Agreement and the legal relations between the Parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

13.11 Possession. Seller shall deliver to Greeley possession of the Property, subject to the Permitted Exceptions on the Closing Date, upon release from escrow of all items to be delivered by Greeley to the Closing, including, without limitation, the Purchase Price.

13.12 Review by Counsel. The Parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

13.13 Calendar Days. In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day.

13.14 Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by both Seller and Greeley.

13.15 Water and Sewer Board Approval Required. GREELEY'S OBLIGATIONS UNDER THIS AGREEMENT ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE GREELEY WATER AND SEWER BOARD.

13.16 Acceptance. Upon execution and delivery of this Agreement by Seller and Greeley, as approved by the Board, this Agreement shall constitute an agreement to purchase the Property on the terms and conditions set forth herein. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set opposite their respective signatures below.

LONGS PEAK DAIRY, LLC, a Colorado
Limited Liability Company

Date: _____

Name: _____

Title: _____

THE CITY OF GREELEY, COLORADO,
a Colorado home rule municipal
corporation

Date: _____

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____
City Manager

By _____
City Attorney

AVAILABILITY OF FUNDS:

By _____
Director of Finance

EXHIBIT “A-1” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

EXHIBIT “A-2” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

(See attached Survey of the Land)

EXHIBIT “B” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

(See attached Restrictive Covenant – No Irrigation and Revegetation)

EXAMPLE DO NOT EXECUTE

RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado municipal corporation (the "Greeley"), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by Greeley and described in Exhibit "1" attached hereto and made a part hereof (the "Water Rights"), _____ (the "Declarant"), agrees, warrants and covenants, and the undersigned leaseholder and lienholder, if any, acknowledge and approve, on Declarant's own behalf and on behalf of all successors in interest, that upon notice from Greeley, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit "2" attached hereto and made a part hereof (the "Land").

Upon receipt of one hundred and eighty (180) days prior written notice from Greeley, thereafter Declarant and Declarant's successor in interest shall not irrigate the Land. These covenants shall not prohibit Declarant or Declarant's successor in interest from irrigating the Land (i) with other water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by the City or a successor in interest to the Water Rights; (ii) with water from an existing well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) or with treated potable water supplied by a municipal or quasi-municipal government water provider ("Alternate Water Rights").

Unless so irrigated, then within two and one half (2½) years from the date Declarant ceases to irrigate the Land or any portion thereof with Alternate Water Rights, Declarant or Declarant's successors in interest shall establish, at Declarant's or Declarant's successors in interest's expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5), on the previously irrigated portions of the Land to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by the City, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5). Here, "previously irrigated portions of the Land" means portions of the Land not occupied by roads, buildings, or other structures, which was cultivated with crops in accordance with these covenants. Declarant, or Declarant's successors in interest, shall provide notice to Greeley when such revegetation of the Land has been established. Declarant agrees the Land subject to these covenants shall not be planted with crops which are capable of extending roots into the underlying groundwater, including but not limited to the growing of alfalfa.

Should Declarant or Declarant's successor in interest fail to comply with its obligations hereunder, Greeley shall have the right to come upon the Land and take all measures necessary to accomplish the Declarant's obligations hereunder, including but not limited to revegetation

and/or noxious weed management on the Land, provided that Greeley shall have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarant or Declarant's successor in interest. Any and all fees and costs incurred in any necessary action to enforce these Restrictive Covenants by City, including reasonable attorney fees, shall be paid by Declarant. Additionally, Greeley shall have the right to come upon the Land to verify Declarant's compliance with its obligations hereunder, with any such inspections being at the sole expense of Greeley. All rights to enter upon the Land granted herein shall terminate upon a final determination by the District Court for Water Division No. 1, State of Colorado, under the court's retained jurisdiction, that no further actions will be necessary in order to satisfy Declarant's revegetation obligations.

The foregoing covenants shall burden, attach to, and run with the Land and shall be binding upon Declarant and Declarant's successors, assigns and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of Greeley's successors, assigns, and any other person who acquire an ownership interest in the Water Rights. Declarant warrants and represents such covenants shall entitle Greeley to the first and prior right to claim credit for the dry-up or non-irrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by Greeley or its successors in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of Greeley or its successors in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: _____.

IN WITNESS WHEREOF, the Declarant have executed this instrument on the ____ day of _____, 20__.

Declarant:

By: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT “1” TO RESTRICTIVE COVENANT (NO IRRIGATION AND REVEGETATION)
(Description of the Water Rights)

EXHIBIT “2” TO RESTRICTIVE COVENANT (NO IRRIGATION AND REVEGETATION)
(Description of the Land)

EXHIBIT “C” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

(See attached Historical Use Affidavit and Questionnaire)

AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: _____

Shares or Interest: _____

Name and address of owner and user of water rights:

Owner(s): _____

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF HISTORICALLY IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights: _____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this _____ day of _____, 20__.

[SELLER]

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me
this _____ day of _____, 20__ by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

The person completing this questionnaire must have personal knowledge of the information provided

1. Name: _____
 Mailing Address: _____

 Telephone: _____
 Facsimile: _____
 Email Address: _____

2. The information provided below pertains to _____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").

- Did you use the Shares pursuant to a Lease Agreement? _____
- Date of the Lease: _____
- Name of Lessee (if different from above): _____
- Name of Lessor: _____

3. The information in this questionnaire relates to my use of the Shares from _____ to _____ ("Ownership Period").

4. Do you still own the farm or parcel irrigated by these Shares? _____

5. Was your use of the Shares during the Ownership Period consistent with the bylaws, rules, regulations, and policies of the ditch company? _____

6. What is the legal description of the farm or parcel on which these Shares were used?

7. What is the total size of the farm or parcel? _____ acres.

8. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.

9. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

10. Please provide the following information regarding how the water from these Shares is delivered:

- Location and ID Number of the head gate at the main ditch: _____
 _____.

- Name and general location of any lateral(s) delivering the water to the land historically irrigated:_____.
- Identification of any carrier or lateral ditch stock required to deliver these rights:_____.
- Approximate location of pumps, if used: _____.
- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.
- How was water applied during the Ownership Period? Sprinkler ____ Furrow ____ Flood ____
- Other/Combination (Describe): _____.

11. During the Ownership Period, did you divert and irrigate with all water available under the Shares?_____. If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

12. Other than the Shares, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Ownership Period? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____.
- Any other water used: _____

13. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water:_____

14. During the Period of Ownership, what crops were grown on the land irrigated by the Shares?

1. Crop: _____ Percentage: _____ Location: _____

2. Crop: _____ Percentage: _____ Location: _____
3. Crop: _____ Percentage: _____ Location: _____
4. Crop: _____ Percentage: _____ Location: _____
5. Crop: _____ Percentage: _____ Location: _____
6. Crop: _____ Percentage: _____ Location: _____

15. Were the lands on which the Shares were used subirrigated? Yes _____ No _____

16. If possible, please provide a map, sketch, or aerial photograph showing locations of
(check if included):

_____ Farm or Parcel
_____ Areas irrigated by the Shares during the Lease Year
_____ Areas irrigated with other water
_____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water
ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “D” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

[See attached Special Warranty Deed]

EXAMPLE DO NOT EXECUTE

WHEN RECORDED RETURN TO:

SPECIAL WARRANTY DEED (Water Rights)

THIS DEED, made this ____ day of _____, 202_, between [NAME OF GRANTOR], whose address is _____ (“Grantor”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose address, for purposes of this Deed, is 1001 11th Avenue, 2nd Floor, Greeley, Colorado, 80631 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee’s heirs and assigns forever all of the water rights described below (the “Water Rights”):

(a) The water rights represented by [NUMBER OF SHARES] share in the [NAME OF MUTUAL DITCH COMPANY] evidenced by Stock Certificate No. [____] (the “Shares”) and the water derived therefrom.

(b) All beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said Shares, and in addition, and in no way limited by the foregoing, any and all other right, title or interest in the [NAME OF MUTUAL DITCH COMPANY] represented by said Shares.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said Water Rights above bargained and described with the appurtenances, unto the Grantee, the Grantee's heirs and assigns forever. And the Grantor, for the Grantor, the Grantor’s successors and assigns, does covenant and agree that Grantor shall WARRANT AND FOREVER DEFEND the above-bargained Water Rights in the quiet and peaceable possession of the Grantee, the Grantee’s successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this deed on the ____ day of _____, 20__.

Grantor:

By:_____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by _____, whose signature appear above as the Grantor.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT “E” TO PURCHASE AND SALE AGREEMENT—WATER RIGHTS ONLY
(SELLER)

[See attached Stock Assignments]

EXAMPLE DO NOT EXECUTE

ASSIGNMENT OF SHARES

(Stock Certificate No. ____)

For value received, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned, [SELLER], ("Assignor") hereby sell, assign, and transfer unto the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("Assignee"), _____[X] share(s) of the capital stock, [**MAY NEED TO SPECIFY COMMON OR PREFERRED**] of [COMPANY] which stock is standing in the name of the undersigned on the books and records of the corporation represented by Certificate No. [____], free and clear of all liens, encumbrances and past-due assessments.

Assignors hereby authorize and empower the secretary of [COMPANY] to transfer said certificate, and to effectuate this assignment and transfer on the books of the [COMPANY].

[SELLER]

Dated: _____ By: _____
Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT “H-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Restrictive Covenant – No Irrigation and Revegetation – Owl Creek Farm)

RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado home rule municipal corporation (“Greeley”), with the maximum benefit available from the present and future use of water pursuant to the water rights described in Exhibit 1 attached hereto and incorporated herein (“Water Rights”), LONGS PEAK DAIRY, LLC, a Colorado limited liability company (“Declarant”), agrees, warrants and covenants on Declarant’s own behalf and on behalf of all successors in interest, that upon notice from Greeley, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit 2 attached hereto and incorporated herein (“Land”).

Upon receipt of one hundred and eighty (180) days prior written notice from Greeley, thereafter Declarant and Declarant’s successors in interest shall not irrigate the Land. These covenants shall not prohibit Declarant or Declarant’s successors in interest from irrigating the Land (i) with other water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by Greeley or a successor in interest to the Water Rights; (ii) with water from an existing well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) or with treated potable water supplied by a municipal or quasi-municipal government water provider (“Alternate Water Rights”).

Unless so irrigated, then within two and one half (2½) years from the date Declarant ceases to irrigate the Land or any portion thereof with Alternate Water Rights, Declarant or Declarant’s successors in interest shall also establish, at Declarant’s or Declarant’s successors in interest’s expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5), on the previously irrigated portions of the Land to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by Greeley, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5). Previously irrigated portions of the Land means portions of the Land not occupied by roads, buildings, or other structures, which land was cultivated with crops in accordance with these covenants. Declarant, or Declarant’s successors in interest, shall provide notice to Greeley when such revegetation of the Land has been established. Declarant agrees the Land subject to these covenants shall not be planted with crops that are capable of extending roots into the underlying groundwater, including, but not limited to, alfalfa.

Should Declarant or Declarant’s successors in interest fail to comply with its obligations hereunder, Greeley shall have the right to come upon the Land and take all measures necessary to accomplish the Declarant’s obligations hereunder, including but not limited to revegetation and/or noxious weed management on the Land, provided that Greeley shall also have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarant or Declarant’s successor in interest. Any and all fees and costs incurred in any necessary action to enforce these covenants by Greeley, including reasonable attorney fees, shall be paid by Declarant. Additionally, Greeley shall have the right to come upon the Land to verify Declarant’s compliance with its obligations hereunder, with any such inspections being at the sole expense of Greeley. All rights to enter upon the Land granted herein shall terminate upon a final determination by the District Court for Water Division No. 1, State of Colorado, under the court’s retained jurisdiction, that no further actions will be necessary in order to satisfy Declarant’s revegetation obligations.

The foregoing covenants shall burden, attach to, and run with the Land and shall be binding upon Declarant and Declarant’s successors, assigns and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of Greeley’s successors, assigns, and any other person who acquires an ownership interest in the Water Rights. Declarant warrants and represents such covenants shall entitle Greeley to the first and prior right to claim credit for the dry-up or non-irrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by Greeley or its successors in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of Greeley or its successors in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 45490 County Road 39, Pierce, Colorado 80650.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the _____ day of _____ 2021.

DECLARANT
Longs Peak Dairy, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021 by _____, as an authorized representative of Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____

When recorded return to:

City of Greeley Water and Sewer Department
Attn: Water Resources Division
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631

EXHIBIT 1
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Water Rights)

All water and water rights, ditches and ditch rights, reservoirs and reservoir rights, and all other rights and interests represented by five and one-sixths (5-1/6) shares of capital stock in The Water Supply and Storage Company, evidenced by Stock Certificate No. 6576 (for two (2) shares), (Stock Certificate No. 6581 (for one-half (1/2) of a share), Stock Certificate No. 6603 (for five-twelfths (5/12) of a share), Stock Certificate No. 6614 (for two (2) shares), and Stock Certificate No. 6617 (for one-fourth (1/4) of a share).

EXHIBIT 2
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Land)

PARCEL 1:

(Weld County Parcel No. 055135400002) – Lot D of Recorded Exemption No. 0551-35-4 RE-4888, recorded June 22, 2009 at Reception No. 3631749, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135400031) – Lot D of Recorded Exemption No. 0551-35-3 RE-4887, recorded June 22, 2009 at Reception No. 3631748, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135100008) – Lot D of Recorded Exemption No. 0551-35-2 RE-4692, recorded December 6, 2007 at Reception No. 3522044, being part of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135200025) – Lot D of Recorded Exemption No. 0551-35-2 RECX 15-0003, recorded May 14, 2015 at Reception No. 4107116, being part of the N ½ of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado; containing 121.57 acres more or less.

PARCEL 2:

Lots A, B and C of Recorded Exemption No. 0551-35-2 RE-4693 recorded December 6, 2007 at Reception No. 3522045, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Recorded Exemption No. 0551-35-2 RE-4692 recorded December 6, 2007 at Reception No. 3522044, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Amended Recorded Exemption No. 0551-35-4 AmRE-3698 recorded December 6, 2007 at Reception No. 3522043, being a portion of the South Half of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

EXHIBIT “H-2” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Restrictive Covenant – No Irrigation and Revegetation – Varra Farm)

RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado home rule municipal corporation (“Greeley”), with the maximum benefit available from the present and future use of water pursuant to the water rights described in Exhibit 1 attached hereto and incorporated herein (“Water Rights”), LONGS PEAK DAIRY, LLC, a Colorado limited liability company (“Declarant”), agrees, warrants and covenants on Declarant’s own behalf and on behalf of all successors in interest, that upon notice from Greeley, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit 2 attached hereto and incorporated herein (“Land”).

Upon receipt of one hundred and eighty (180) days prior written notice from Greeley, thereafter Declarant and Declarant’s successors in interest shall not irrigate the Land. These covenants shall not prohibit Declarant or Declarant’s successors in interest from irrigating the Land (i) with other water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by Greeley or a successor in interest to the Water Rights; (ii) with water from an existing well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) or with treated potable water supplied by a municipal or quasi-municipal government water provider (“Alternate Water Rights”).

Unless so irrigated, then within two and one half (2½) years from the date Declarant ceases to irrigate the Land or any portion thereof with Alternate Water Rights, Declarant or Declarant’s successors in interest shall also establish, at Declarant’s or Declarant’s successors in interest’s expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5), on the previously irrigated portions of the Land to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by Greeley, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5). Previously irrigated portions of the Land means portions of the Land not occupied by roads, buildings, or other structures, which land was cultivated with crops in accordance with these covenants. Declarant, or Declarant’s successors in interest, shall provide notice to Greeley when such revegetation of the Land has been established. Declarant agrees the Land subject to these covenants shall not be planted with crops that are capable of extending roots into the underlying groundwater, including, but not limited to, alfalfa.

Should Declarant or Declarant’s successors in interest fail to comply with its obligations hereunder, Greeley shall have the right to come upon the Land and take all measures necessary to accomplish the Declarant’s obligations hereunder, including but not limited to revegetation and/or noxious weed management on the Land, provided that Greeley shall also have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarant or Declarant’s successor in interest. Any and all fees and costs incurred in any necessary action to enforce these covenants by Greeley, including reasonable attorney fees, shall be paid by Declarant. Additionally, Greeley shall have the right to come upon the Land to verify Declarant’s compliance with its obligations hereunder, with any such inspections being at the sole expense of Greeley. All rights to enter upon the Land granted herein shall terminate upon a final determination by the District Court for Water Division No. 1, State of Colorado, under the court’s retained jurisdiction, that no further actions will be necessary in order to satisfy Declarant’s revegetation obligations.

The foregoing covenants shall burden, attach to, and run with the Land and shall be binding upon Declarant and Declarant’s successors, assigns and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of Greeley’s successors, assigns, and any other person who acquires an ownership interest in the Water Rights. Declarant warrants and represents such covenants shall entitle Greeley to the first and prior right to claim credit for the dry-up or non-irrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by Greeley or its successors in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of Greeley or its successors in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 45490 County Road 39, Pierce, Colorado 80650.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the _____ day of _____ 2021.

DECLARANT
Longs Peak Dairy, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021 by _____, as an authorized representative of Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____

When recorded return to:

City of Greeley Water and Sewer Department
Attn: Water Resources Division
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631

EXHIBIT 1
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Water Rights)

All water and water rights, ditches and ditch rights, reservoirs and reservoir rights, and all other rights and interests represented by two (2) shares of capital stock in The Water Supply and Storage Company, evidenced by Stock Certificate No. 6721.

EXHIBIT 2
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Land)

The NE ¼ of Section 28, Township 28 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, EXCEPT that portion described in Deed Recorded April 11, 1910 in Book 270 at Page 543.

EXHIBIT “H-3” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Restrictive Covenant – No Irrigation and Revegetation – Hasbrouck Farm)

RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado home rule municipal corporation (“Greeley”), with the maximum benefit available from the present and future use of water pursuant to the water rights described in Exhibit 1 attached hereto and incorporated herein (“Water Rights”), LONGS PEAK DAIRY, LLC, a Colorado limited liability company (“Declarant”), agrees, warrants and covenants on Declarant’s own behalf and on behalf of all successors in interest, that upon notice from Greeley, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit 2 attached hereto and incorporated herein (“Land”).

Upon receipt of one hundred and eighty (180) days prior written notice from Greeley, thereafter Declarant and Declarant’s successors in interest shall not irrigate the Land. These covenants shall not prohibit Declarant or Declarant’s successors in interest from irrigating the Land (i) with other water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by Greeley or a successor in interest to the Water Rights; (ii) with water from an existing well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) or with treated potable water supplied by a municipal or quasi-municipal government water provider (“Alternate Water Rights”).

Unless so irrigated, then within two and one half (2½) years from the date Declarant ceases to irrigate the Land or any portion thereof with Alternate Water Rights, Declarant or Declarant’s successors in interest shall also establish, at Declarant’s or Declarant’s successors in interest’s expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5), on the previously irrigated portions of the Land to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by Greeley, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5). Previously irrigated portions of the Land means portions of the Land not occupied by roads, buildings, or other structures, which land was cultivated with crops in accordance with these covenants. Declarant, or Declarant’s successors in interest, shall provide notice to Greeley when such revegetation of the Land has been established. Declarant agrees the Land subject to these covenants shall not be planted with crops that are capable of extending roots into the underlying groundwater, including, but not limited to, alfalfa.

Should Declarant or Declarant’s successors in interest fail to comply with its obligations hereunder, Greeley shall have the right to come upon the Land and take all measures necessary to accomplish the Declarant’s obligations hereunder, including but not limited to revegetation and/or noxious weed management on the Land, provided that Greeley shall also have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarant or Declarant’s successor in interest. Any and all fees and costs incurred in any necessary action to enforce these covenants by Greeley, including reasonable attorney fees, shall be paid by Declarant. Additionally, Greeley shall have the right to come upon the Land to verify Declarant’s compliance with its obligations hereunder, with any such inspections being at the sole expense of Greeley. All rights to enter upon the Land granted herein shall terminate upon a final determination by the District Court for Water Division No. 1, State of Colorado, under the court’s retained jurisdiction, that no further actions will be necessary in order to satisfy Declarant’s revegetation obligations.

The foregoing covenants shall burden, attach to, and run with the Land and shall be binding upon Declarant and Declarant’s successors, assigns and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of Greeley’s successors, assigns, and any other person who acquires an ownership interest in the Water Rights. Declarant warrants and represents such covenants shall entitle Greeley to the first and prior right to claim credit for the dry-up or non-irrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by Greeley or its successors in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of Greeley or its successors in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 45490 County Road 39, Pierce, Colorado 80650.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the _____ day of _____ 2021.

DECLARANT
Longs Peak Dairy, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021 by _____, as an authorized representative of Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____

When recorded return to:

City of Greeley Water and Sewer Department
Attn: Water Resources Division
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631

EXHIBIT 1
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Water Rights)

All water and water rights, ditches and ditch rights, reservoirs and reservoir rights, and all other rights and interests represented by two and one-quarter (2.25) shares of capital stock in The Water Supply and Storage Company, evidenced by Stock Certificate No. 6698.

EXHIBIT 2
RESTRICTIVE COVENANTS (NO IRRIGATION AND REVEGETATION)

(Description of the Land)

PARCEL 1

The East 1/3 of the Northwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 52.631 acres more or less.¹ With regard to Parcel 1 of the Land, Declarant is subject to a Dry-Up Covenant granted by his predecessor-in-interest to the City of Thornton dated Aug. 1, 2008 and recorded at Reception No. 7372054 of the Weld County Clerk and Recorder's office; and

PARCEL 2

Lot B of Recorded Exemption No. 0551-22-4-RE 620, recorded June 15, 1983 in Book 999 at Reception No. 01930309, being a part of the Southeast ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 151.967 acres more or less; and

PARCEL 3

Lot B of Amended Recorded Exemption No. 0551-22-3-AMRE 1907, recorded February 26, 2001 at Reception No. 2827884, being a part of the East ½ of the Southwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado;

Also described as: The East Half of the Southwest Quarter of Section 22, Township 8 North, Range 65 West of the 6th Principal Meridian, County of Weld, State of Colorado, EXCEPT that parcel described as Lot A of Amended Recorded Exception No. 0551-22-3-AMRE 1907 recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., and EXCEPT that parcel described as Subdivision Exemption No. 593, recorded July 10, 1996 in Book 1555 at Reception No. 2500336, County of Weld, State of Colorado. Said described parcel being 75.623 acres, more or less.

¹ Parcel 1 and 10 acres in Parcel 2 are subject to a dry up covenant dated August 1, 2008 granted to the City of Thornton by Hasbrouck Holdings, LLC and recorded in the Weld County Clerk and Recorder's Office at Reception No. 7372054 ("Thornton Dry-Up Covenant). At the time the City gives notice to the Declarant to cease irrigation, the Declarant shall cease irrigation on all land described herein, including, if applicable, those lands subject to the Thornton Dry-Up Covenant. However, the City shall not claim the lands subject to the Thornton Dry-Up Covenant in any future water court application to change the subject Water Rights.

EXHIBIT “I-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached 20 – Year Water Rights Leaseback for Shares Associated with the Owl Creek Farm)

IRRIGATION WATER LEASE AGREEMENT
(Owl Creek Farm WSSC Rights)

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this ____ day of _____ 2021, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 ("Greeley"), and LONGS PEAK DAIRY, LLC, a Colorado limited liability company whose address is 45490 County Road 39, Pierce, Colorado 80650 ("Lessee").

RECITALS

WHEREAS, Greeley owns those certain water rights, including the transmountain return flows associated with such rights, represented by five and one-sixths (5-1/6) shares of capital stock in The Water Supply and Storage Company, previously evidenced by (i) Stock Certificate No. 6576 (for two (2) shares), (ii) Stock Certificate No. 6581 (for one-half (1/2) of a share), (iii) Stock Certificate No. 6603 (for five-twelfths (5/12) of a share), (vi) Stock Certificate No. 6614 (for two (2) shares), and (v) Stock Certificate No. 6617 (for one-fourth (1/4) of a share); five and one-sixth (5-1/6) shares of capital stock in The Lone Tree Lateral Company, previously evidenced by Stock Certificate No. 230 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares); and five and one-sixth (5-1/6) shares of stock in The Collins Ditch Company, previously evidenced by Stock Certificate No. 844 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares) (collectively "Water Rights"); and

WHEREAS, Lessee desires to lease the Water Rights from Greeley for agricultural irrigation on certain parcels of real property consisting of approximately ____ acres and more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, Lessee also desires to utilize the transmountain return flows associated with the Water Rights to augment out-of-priority depletions, as is allowed and more particularly described by the 2003CW089 decree entered by the District Court, Water Division No. 1, on January 14, 2009 ("LOMAC Decree"); and

WHEREAS, Greeley is willing to lease the Water Rights to Lessee for agricultural irrigation on the Property and augmentation of out-of-priority depletions in accordance with the LOMAC Decree;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Greeley and Lessee agree as follows.

AGREEMENT

1. Water Rights Lease. Greeley hereby leases to Lessee, and Lessee hereby leases from Greeley, the above-described Water Rights for the purpose of agricultural irrigation on the Property and augmentation of out-of-priority depletions in accordance with the LOMAC Decree.

2. Term of Lease. The term of this Agreement begins on the date of mutual execution and ends after a period of twenty (20) years ("Initial Term"). At the end of this Initial Term, this Agreement shall renew automatically on an annual basis for five (5) subsequent terms of one (1) year each ("Renewal Terms"), unless Greeley or Lessee transmits written notice of nonrenewal on or before November 1 of the preceding calendar year. Lessee may terminate this Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering two years' advance written notice to Greeley. Greeley may terminate this Agreement during the Initial Term, prior to any irrigation season, by delivering advance written notice to Lessee on or before November 1 of the preceding calendar year, if Greeley determines in its sole discretion that the Water Rights are needed for any municipal purpose, or if Greeley is required to cease irrigation with the Water Rights by the terms and conditions

of a water court decree. Refer to Section 12 for provisions relating to termination for cause, and to Section 14 regarding good faith negotiations to renew after this Agreement expires.

3. Annual Lease Amount and Administrative Fee. Lessee shall pay to Greeley an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by Greeley to The Water Supply and Storage Company. Lessee is entitled to use of the transmountain return flows associated with the Water Rights under this Agreement, but the Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to leasing the transmountain return flows associated with the Water Rights. Lessee shall also pay to Greeley an Annual Administrative Fee equal to ten percent of that year's Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). Greeley will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to Lessee, and Lessee shall deliver payment of that total amount to Greeley no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from Greeley. Lessee shall also remit to Greeley an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. Use of Water Rights. Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property and augmentation of out-of-priority depletions in accordance with the LOMAC Decree. Lessee shall not use the Water Rights for any other uses. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of The Water Supply and Storage Company, Collins Ditch Company, and Lone Tree Lateral Company. Lessee shall comply with Title 14 (or any successor section) of the Greeley Municipal Code, and all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall provide advance written notice to Greeley of at least thirty days if they no longer intend to irrigate the entirety of the Property with the Water Rights. Absent written consent from Greeley, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Property, other than water yielded pursuant to the Water Rights.

5. Affidavit of Beneficial Use and Water Court Proceedings. Lessee agrees to deliver to Greeley, on or before May 15 of each calendar year, a completed Beneficial Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee acknowledges that Greeley may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee agrees to cooperate with Greeley and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Greeley, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. Restriction on Sublease and Assignment. Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from Greeley. Lessee shall request consent from Greeley prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley.

7. No Vested Interest in Shares or Joint Venture. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint

venture of any kind between the parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through their use of the Water Rights on the Property.

8. No Guarantee of Yield. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. Greeley makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold Greeley liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. Maintenance of Infrastructure. Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at Lessee's own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. Indemnification; Immunity. Lessee agrees to exercise Lessee's rights under this Agreement at Lessee's own risk. Lessee shall indemnify and hold harmless Greeley from and against any cost, expense, or liability arising out of or relating to Lessee's exercise of its rights or obligations under this Agreement, including, without limitation, the use of the Water Rights. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. Lessee shall provide written notice to Greeley if the appropriate contact information changes.

12. Default and Termination. If either Greeley or Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraphs 3, 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, Greeley may immediately terminate this Agreement by written notice to Lessee.

(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property with the Water Rights.

14. Good Faith Negotiation of Lease Renewal upon Expiration. Greeley acknowledges that it will be open to discussing new or renewal leases in good faith after the expiration of the Initial Term and all subsequent Renewal Terms, if the Water Rights are available for continued irrigation use at that time. Lessee understands and acknowledges that this representation is non-binding, but intended to represent the desire of Greeley and Lessee to negotiate a new or renewal lease in good faith after this Agreement expires. Nothing in this paragraph shall be interpreted to create an obligation on the part of Greeley or Lessee to renew this Agreement after its expiration or termination.

15. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than Lessee and Greeley, or their respective permissible successors in interest.

16. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

17. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

18. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties.

19. Integration. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between Greeley and Lessee except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by Greeley and Lessee.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

21. Recording. Lessee shall not record this Agreement in the real property records of any jurisdiction. This Agreement is not intended to run with the land as a covenant burdening real property.

IN WITNESS WHEREOF, the undersigned parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

LESSEE
LONGS PEAK DAIRY, LLC

By: _____

Date: _____

Name: _____

Title: _____

CITY OF GREELEY,
a Colorado home rule municipal corporation
acting by and through its Water Enterprise

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2021
by _____, as _____ of the Lessee, Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

EXHIBIT A
IRRIGATION WATER LEASE AGREEMENT
(Description of the Property)

Owl Creek Farm

PARCEL 1:

(Weld County Parcel No. 055135400002) – Lot D of Recorded Exemption No. 0551-35-4 RE-4888, recorded June 22, 2009 at Reception No. 3631749, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135400031) – Lot D of Recorded Exemption No. 0551-35-3 RE-4887, recorded June 22, 2009 at Reception No. 3631748, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135100008) – Lot D of Recorded Exemption No. 0551-35-2 RE-4692, recorded December 6, 2007 at Reception No. 3522044, being part of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

(Weld County Parcel No. 055135200025) – Lot D of Recorded Exemption No. 0551-35-2 RECX 15-0003, recorded May 14, 2015 at Reception No. 4107116, being part of the N ½ of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado; containing 121.57 acres more or less.

PARCEL 2:

Lots A, B and C of Recorded Exemption No. 0551-35-2 RE-4693 recorded December 6, 2007 at Reception No. 3522045, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Recorded Exemption No. 0551-35-2 RE-4692 recorded December 6, 2007 at Reception No. 3522044, being a portion of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

Lot A of Amended Recorded Exemption No. 0551-35-4 AmRE-3698 recorded December 6, 2007 at Reception No. 3522043, being a portion of the South Half of Section 35, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.

EXHIBIT B
IRRIGATION WATER LEASE AGREEMENT
(Beneficial Use Affidavit and Questionnaire)

ANNUAL AFFIDAVIT OF BENEFICIAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: City of Greeley
Water and Sewer Department
1001 11th Avenue, Second Floor
Greeley, Colorado 80631

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights:_____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this ____ day of _____, 20__.

[AFFIANT]

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

*The person completing this questionnaire need not necessarily be the Lessee,
but must have personal knowledge of the information provided*

1. Name: _____
Mailing Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____
2. The information provided below pertains to ____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").
3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____
4. The information in this questionnaire relates to my use of the Shares during the [20__] irrigation season (hereinafter "Lease Year").
5. Do you still own the farm or parcel irrigated by these Shares? _____
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____
7. What is the legal description of the farm or parcel on which these Shares were used?
8. What is the total size of the farm or parcel? _____ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

11. Please provide the following information regarding how the water from these Shares is delivered.

- Location and ID Number of the head gate at the main ditch: _____.
- Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
- Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
- Approximate location of pumps, if used: _____.
- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.

12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____.

13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? _____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____.
- Any other water used: _____

16. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____.

17. During the Lease Year, what crops were grown on the land irrigated by the Shares?

1. Crop: _____ Percentage: _____ Location: _____
2. Crop: _____ Percentage: _____ Location: _____

3. Crop: _____ Percentage: _____ Location: _____
4. Crop: _____ Percentage: _____ Location: _____
5. Crop: _____ Percentage: _____ Location: _____
6. Crop: _____ Percentage: _____ Location: _____

18. Were the lands on which the Shares were used subirrigated? Yes _____ No _____

19. If possible, please provide a map, sketch, or aerial photograph showing locations of (*check if included*):

- _____ Farm or Parcel
_____ Areas irrigated by the Shares during the Lease Year
_____ Areas irrigated with other water
_____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “I-2” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Leaseback for Shares Associated with the Varra Farm)

IRRIGATION WATER LEASE AGREEMENT
(Varra Farm WSSC Rights)

This IRRIGATION WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of _____ 2021, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“Greeley”), and LONGS PEAK DAIRY, LLC, a Colorado limited liability company whose address is 45490 County Road 39, Pierce, Colorado 80650 (“Lessee”).

RECITALS

WHEREAS, Greeley owns those certain water rights represented by two (2) shares of capital stock in The Water Supply and Storage Company (“WSSC”) (Stock Certificate No. 6721), two (2) shares of capital stock in the Collins Ditch Company (Stock Certificate No. 858), and two (2) shares of capital stock in the Lone Tree Lateral Company (Stock Certificate No. 252) (collectively “Water Rights”); and

WHEREAS, Lessee desires to lease the Water Rights from Greeley for agricultural irrigation on a parcel of real property consisting of approximately 156 acres and more particularly described as:

The NE ¼ of Section 28, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, EXCEPT that portion described in Deed recorded April 11, 1910 in Book 270 at Page 543 (“Property”); and

WHEREAS, Greeley is willing to lease the Water Rights to Lessee for agricultural irrigation on the Property;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Greeley and Lessee agree as follows.

AGREEMENT

1. Water Rights Lease. Greeley hereby leases to Lessee, and Lessee hereby leases from Greeley, the native component of the above-described Water Rights for the purpose of agricultural irrigation on the Property.

2. Term of Lease. The term of this Agreement begins on the date of mutual execution and ends after a period of ten (10) years (“Initial Term”). At the end of this Initial Term, this Agreement shall renew automatically on an annual basis for five (5) subsequent terms of one (1) year each (“Renewal Terms”), unless Greeley or Lessee transmits written notice of nonrenewal on or before November 1 of the preceding calendar year. Lessee may terminate this Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering two years’ advance written notice to Greeley. Greeley may terminate this Agreement during the Initial Term, prior to any irrigation season, by delivering advance written notice to Lessee on or before November 1 of the preceding calendar year, if Greeley determines in its sole discretion that the Water Rights are needed for any municipal purpose, or if Greeley is required to cease irrigation with the Water Rights by the terms and conditions of a water court decree. Additionally, refer to Section 12 for provisions relating to termination for cause.

3. Annual Lease Amount and Administrative Fee. Lessee shall pay to Greeley an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by Greeley to The Water Supply and Storage Company. The Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to the transmountain return flows associated with the Water Rights. Lessee shall also pay to Greeley an Annual Administrative Fee equal to ten percent of that year’s Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). Greeley will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to Lessee, and Lessee shall

deliver payment of that total amount to Greeley no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from Greeley. Lessee shall also remit to Greeley an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. Use of Water Rights. Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the Water Rights for any other uses. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of The Water Supply and Storage Company, Collins Ditch Company, and Lone Tree Lateral Company. Lessee shall comply with Title 14 (or any successor section) of the Greeley Municipal Code, and all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall provide advance written notice to Greeley of at least thirty days if they no longer intend to irrigate the entirety of the Property with the Water Rights. Absent written consent from Greeley, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Property, other than water yielded pursuant to the Water Rights.

5. Affidavit of Beneficial Use and Water Court Proceedings. Lessee agrees to deliver to Greeley, on or before May 15 of each calendar year, a completed Beneficial Use Affidavit and Questionnaire, in the form attached hereto as Exhibit A. Lessee acknowledges that Greeley may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee agrees to cooperate with Greeley and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Greeley, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. Restriction on Sublease and Assignment. Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from Greeley. Lessee shall request consent from Greeley prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley.

7. No Vested Interest in Shares or Joint Venture. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through their use of the Water Rights on the Property.

8. No Guarantee of Yield. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. Greeley makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold Greeley liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. Maintenance of Infrastructure. Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at Lessee's own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. Indemnification; Immunity. Lessee agrees to exercise Lessee's rights under this Agreement at Lessee's own risk. Lessee shall indemnify and hold harmless Greeley from and against any cost, expense, or liability arising out of or relating to Lessee's exercise of its rights under this Agreement, including, without limitation, the use of the Water Rights. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. Lessee shall provide written notice to Greeley if the appropriate contact information changes.

12. Default and Termination. If either Greeley or Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraphs 3, 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, Greeley may immediately terminate this Agreement by written notice to Lessee.

(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property with the Water Rights.

14. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than Lessee and Greeley, or their respective permissible successors in interest.

15. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

16. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

17. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties.

18. Integration. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between

Greeley and Lessee except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by Greeley and Lessee.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

20. Recording. Lessee shall not record this Agreement in the real property records of any jurisdiction. This Agreement is not intended to run with the land as a covenant burdening real property.

IN WITNESS WHEREOF, the undersigned parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

LESSEE
LONGS PEAK DAIRY, LLC

By: _____
Name: _____
Title: _____

Date: _____

CITY OF GREELEY,
a Colorado home rule municipal corporation
acting by and through its Water Enterprise

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021
by _____, as _____ of the Lessee, Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

EXHIBIT A
IRRIGATION WATER LEASE AGREEMENT
(Beneficial Use Affidavit and Questionnaire)

ANNUAL AFFIDAVIT OF BENEFICIAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: City of Greeley
Water and Sewer Department
1001 11th Avenue, Second Floor
Greeley, Colorado 80631

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights:_____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this ____ day of _____, 20__.

[AFFIANT]

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by
_____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

*The person completing this questionnaire need not necessarily be the Lessee,
but must have personal knowledge of the information provided*

1. Name: _____
Mailing Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

2. The information provided below pertains to _____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").

3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____

4. The information in this questionnaire relates to my use of the Shares during the [20__] irrigation season (hereinafter "Lease Year").

5. Do you still own the farm or parcel irrigated by these Shares? _____

6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____

7. What is the legal description of the farm or parcel on which these Shares were used?

8. What is the total size of the farm or parcel? _____ acres.

9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.

10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

11. Please provide the following information regarding how the water from these Shares is delivered.
 - Location and ID Number of the head gate at the main ditch: _____
_____.
 - Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
 - Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
 - Approximate location of pumps, if used: _____
_____.

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used:

_____.

12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____.

13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? _____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

_____.

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____
_____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____
_____.
- Any other water used: _____

16. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____
_____.

17. During the Lease Year, what crops were grown on the land irrigated by the Shares?

1. Crop: _____ Percentage: _____ Location: _____
2. Crop: _____ Percentage: _____ Location: _____
3. Crop: _____ Percentage: _____ Location: _____
4. Crop: _____ Percentage: _____ Location: _____
5. Crop: _____ Percentage: _____ Location: _____
6. Crop: _____ Percentage: _____ Location: _____

18. Were the lands on which the Shares were used subirrigated? Yes _____ No _____

19. If possible, please provide a map, sketch, or aerial photograph showing locations of (check if included):

_____ Farm or Parcel

- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “I-3” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Leaseback for Shares Associated with the Hasbrouck Farm)

IRRIGATION WATER LEASE AGREEMENT
(Hasbrouck Farm WSSC Rights)

This IRRIGATION WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of _____ 2021, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“Greeley”), and LONGS PEAK DAIRY, LLC, a Colorado limited liability company whose address is 45490 County Road 39, Pierce, Colorado 80650 (“Lessee”).

RECITALS

WHEREAS, Greeley owns those certain water rights represented by two and one-quarter (2.25) shares of capital stock in The Water Supply and Storage Company (“WSSC”) (Stock Certificate No. 6698), two (2) shares of capital stock in the Collins Ditch Company (Stock Certificate No. 855), and two (2) shares of capital stock in the Lone Tree Lateral Company (Stock Certificate No. 251) (collectively “Water Rights”); and

WHEREAS, Lessee desires to lease the Water Rights from Greeley for agricultural irrigation on a parcel of real property consisting of approximately 270 acres and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, Greeley is willing to lease the Water Rights to Lessee for agricultural irrigation on the Property;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Greeley and Lessee agree as follows.

AGREEMENT

1. **Water Rights Lease.** Greeley hereby leases to Lessee, and Lessee hereby leases from Greeley, the native component of the above-described Water Rights for the purpose of agricultural irrigation on the Property.

2. **Term of Lease.** The term of this Agreement begins on the date of mutual execution and ends after a period of ten (10) years (“Initial Term”). At the end of this Initial Term, this Agreement shall renew automatically on an annual basis for five (5) subsequent terms of one (1) year each (“Renewal Terms”), unless Greeley or Lessee transmits written notice of nonrenewal on or before November 1 of the preceding calendar year. Lessee may terminate this Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering two years’ advance written notice to Greeley. Greeley may terminate this Agreement during the Initial Term, prior to any irrigation season, by delivering advance written notice to Lessee on or before November 1 of the preceding calendar year, if Greeley determines in its sole discretion that the Water Rights are needed for any municipal purpose, or if Greeley is required to cease irrigation with the Water Rights by the terms and conditions of a water court decree. Additionally, refer to Section 12 for provisions relating to termination for cause.

3. **Annual Lease Amount and Administrative Fee.** Lessee shall pay to Greeley an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by Greeley to The Water Supply and Storage Company. The Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to the transmountain return flows associated with the Water Rights. Lessee shall also pay to Greeley an Annual Administrative Fee equal to ten percent of that year’s Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). Greeley will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to Lessee, and Lessee shall deliver payment of that total amount to Greeley no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from Greeley. Lessee shall also remit to Greeley an additional charge

equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. Use of Water Rights. Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation. Lessee shall not use the Water Rights for any other uses. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property without prior written consent from Greeley. Lessee shall request such consent from Greeley prior to using the Water Rights on any other property by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of The Water Supply and Storage Company, Collins Ditch Company, and Lone Tree Lateral Company. Lessee shall comply with Title 14 (or any successor section) of the Greeley Municipal Code, and all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall provide advance written notice to Greeley of at least thirty days if they no longer intend to irrigate the entirety of the Property with the Water Rights. Absent written consent from Greeley, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Property, other than water yielded pursuant to the Water Rights.

5. Affidavit of Beneficial Use and Water Court Proceedings. Lessee agrees to deliver to Greeley, on or before May 15 of each calendar year, a completed Beneficial Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee acknowledges that Greeley may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee agrees to cooperate with Greeley and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Greeley, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. Restriction on Sublease and Assignment. Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from Greeley. Lessee shall request consent from Greeley prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley.

7. No Vested Interest in Shares or Joint Venture. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through their use of the Water Rights on the Property.

8. No Guarantee of Yield. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. Greeley makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold Greeley liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. Maintenance of Infrastructure. Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at Lessee's own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. Indemnification; Immunity. Lessee agrees to exercise Lessee's rights under this Agreement at Lessee's own risk. Lessee shall indemnify and hold harmless Greeley from and against any cost, expense, or liability arising out of or relating to Lessee's exercise of its rights under this Agreement, including, without limitation, the use of the Water Rights. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. Lessee shall provide written notice to Greeley if the appropriate contact information changes.

12. Default and Termination. If either Greeley or Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraphs 3, 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, Greeley may immediately terminate this Agreement by written notice to Lessee.

(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property with the Water Rights.

14. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than Lessee and Greeley, or their respective permissible successors in interest.

15. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

16. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

17. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties.

18. Integration. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between

Greeley and Lessee except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by Greeley and Lessee.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

20. Recording. Lessee shall not record this Agreement in the real property records of any jurisdiction. This Agreement is not intended to run with the land as a covenant burdening real property.

IN WITNESS WHEREOF, the undersigned parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

LESSEE
LONGS PEAK DAIRY, LLC

By: _____
Name: _____
Title: _____

Date: _____

CITY OF GREELEY,
a Colorado home rule municipal corporation
acting by and through its Water Enterprise

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2021
by _____, as _____ of the Lessee, Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

EXHIBIT A
IRRIGATION WATER LEASE AGREEMENT
(Description of the Property)

PARCEL 1

The East 1/3 of the Northwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 52.631 acres more or less; and

PARCEL 2

Lot B of Recorded Exemption No. 0551-22-4-RE 620, recorded June 15, 1983 in Book 999 at Reception No. 01930309, being a part of the Southeast ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 151.967 acres more or less; and

PARCEL 3

Lot B of Amended Recorded Exemption No. 0551-22-3-AMRE 1907, recorded February 26, 2001 at Reception No. 2827884, being a part of the East ½ of the Southwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado;

Also described as: The East Half of the Southwest Quarter of Section 22, Township 8 North, Range 65 West of the 6th Principal Meridian, County of Weld, State of Colorado, EXCEPT that parcel described as Lot A of Amended Recorded Exception No. 0551-22-3-AMRE 1907 recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., and EXCEPT that parcel described as Subdivision Exemption No.593, recorded July 10, 1996 in Book 1555 at Reception No. 2500336, County of Weld, State of Colorado. Said described parcel being 75.623 acres, more or less.

EXHIBIT B
IRRIGATION WATER LEASE AGREEMENT
(Beneficial Use Affidavit and Questionnaire)

ANNUAL AFFIDAVIT OF BENEFICIAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: City of Greeley
Water and Sewer Department
1001 11th Avenue, Second Floor
Greeley, Colorado 80631

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights:_____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this ____ day of _____, 20__.

[AFFIANT]

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

*The person completing this questionnaire need not necessarily be the Lessee,
but must have personal knowledge of the information provided*

1. Name: _____
Mailing Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

2. The information provided below pertains to ____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").

3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____

4. The information in this questionnaire relates to my use of the Shares during the [20__] irrigation season (hereinafter "Lease Year").

5. Do you still own the farm or parcel irrigated by these Shares? _____

6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____

7. What is the legal description of the farm or parcel on which these Shares were used?

8. What is the total size of the farm or parcel? _____ acres.

9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.

10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

11. Please provide the following information regarding how the water from these Shares is delivered.

- Location and ID Number of the head gate at the main ditch: _____.
- Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
- Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
- Approximate location of pumps, if used: _____.
- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.

12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____.

13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? _____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____.
- Any other water used: _____

16. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____.

17. During the Lease Year, what crops were grown on the land irrigated by the Shares?

1. Crop: _____ Percentage: _____ Location: _____
2. Crop: _____ Percentage: _____ Location: _____

3. Crop: _____ Percentage: _____ Location: _____
4. Crop: _____ Percentage: _____ Location: _____
5. Crop: _____ Percentage: _____ Location: _____
6. Crop: _____ Percentage: _____ Location: _____

18. Were the lands on which the Shares were used subirrigated? Yes _____ No _____

19. If possible, please provide a map, sketch, or aerial photograph showing locations of (*check if included*):

- _____ Farm or Parcel
_____ Areas irrigated by the Shares during the Lease Year
_____ Areas irrigated with other water
_____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “J-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Historical Use Affidavit and Questionnaire – Owl Creek Farm)

AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: The Water Supply and Storage Company

Shares or Interest: (i) Stock Certificate Nos. 6576 (for two (2) shares), (ii) Stock Certificate No. 6581 (for one-half (1/2) of a share), (iii) Stock Certificate Nos 6603 (for five-twelfths (5/12) of a share), (vi) Stock Certificate No. 6614 (for two (2) shares), and (v) Stock Certificate No. 6617 (for one-fourth (1/4) of a share)

Name and address of owner and user of water rights:

Owner(s): _____

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF HISTORICALLY IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights: _____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this ____ day of _____, 20__.

[SELLER]

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me this
_____ day of _____, 20__ by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

The person completing this questionnaire must have personal knowledge of the information provided

1. Name: _____
 Mailing Address: _____

 Telephone: _____
 Facsimile: _____
 Email Address: _____

2. The information provided below pertains to ____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").
 - Did you use the Shares pursuant to a Lease Agreement? _____
 - Date of the Lease: _____
 - Name of Lessee (if different from above): _____
 - Name of Lessor: _____

3. The information in this questionnaire relates to my use of the Shares from _____ to _____ ("Ownership Period").

4. Do you still own the farm or parcel irrigated by these Shares? _____

5. Was your use of the Shares during the Ownership Period consistent with the bylaws, rules, regulations, and policies of the ditch company? _____

6. What is the legal description of the farm or parcel on which these Shares were used? _____

7. What is the total size of the farm or parcel? _____ acres.

8. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.

9. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

10. Please provide the following information regarding how the water from these Shares is delivered:
 - Location and ID Number of the head gate at the main ditch: _____.
 - Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
 - Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
 - Approximate location of pumps, if used: _____.

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.
- How was water applied during the Ownership Period? Sprinkler ____ Furrow ____ Flood ____
- Other/Combination (Describe): _____.

11. During the Ownership Period, did you divert and irrigate with all water available under the Shares? _____. If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

_____.

12. Other than the Shares, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Ownership Period? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____.
- Any other water used: _____

13. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____

_____.

14. During the Period of Ownership, what crops were grown on the land irrigated by the Shares?

- | | | |
|----------------|-------------------|-----------------|
| 1. Crop: _____ | Percentage: _____ | Location: _____ |
| 2. Crop: _____ | Percentage: _____ | Location: _____ |
| 3. Crop: _____ | Percentage: _____ | Location: _____ |
| 4. Crop: _____ | Percentage: _____ | Location: _____ |
| 5. Crop: _____ | Percentage: _____ | Location: _____ |
| 6. Crop: _____ | Percentage: _____ | Location: _____ |

15. Were the lands on which the Shares were used subirrigated? Yes ____ No ____

16. If possible, please provide a map, sketch, or aerial photograph showing locations of (check if included):

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “J-2” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Historical Use Affidavit and Questionnaire – ROFR Rights)

AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner(s): _____

User(s): _____

Year water rights were used as described: _____

DESCRIPTION OF HISTORICALLY IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:
_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights: _____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this _____ day of _____, 20__.

[SELLER]

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me this _____ day of _____, 20__ by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

QUESTIONNAIRE REGARDING USE OF WATER SHARES

The person completing this questionnaire must have personal knowledge of the information provided

17. Name: _____
 Mailing Address: _____

 Telephone: _____
 Facsimile: _____
 Email Address: _____

18. The information provided below pertains to ____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").

- Did you use the Shares pursuant to a Lease Agreement? _____
- Date of the Lease: _____
- Name of Lessee (if different from above): _____
- Name of Lessor: _____

19. The information in this questionnaire relates to my use of the Shares from _____ to _____ ("Ownership Period").

20. Do you still own the farm or parcel irrigated by these Shares? _____

21. Was your use of the Shares during the Ownership Period consistent with the bylaws, rules, regulations, and policies of the ditch company? _____

22. What is the legal description of the farm or parcel on which these Shares were used?

23. What is the total size of the farm or parcel? _____ acres.

24. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.

25. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.

26. Please provide the following information regarding how the water from these Shares is delivered:

- Location and ID Number of the head gate at the main ditch: _____.
- Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
- Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
- Approximate location of pumps, if used: _____.

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.
- How was water applied during the Ownership Period? Sprinkler ____ Furrow ____ Flood ____
- Other/Combination (Describe): _____.

27. During the Ownership Period, did you divert and irrigate with all water available under the Shares? _____. If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

_____.

28. Other than the Shares, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Ownership Period? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____.
- Any other water used: _____

29. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____

_____.

30. During the Period of Ownership, what crops were grown on the land irrigated by the Shares?

- | | | |
|----------------|-------------------|-----------------|
| 1. Crop: _____ | Percentage: _____ | Location: _____ |
| 2. Crop: _____ | Percentage: _____ | Location: _____ |
| 3. Crop: _____ | Percentage: _____ | Location: _____ |
| 4. Crop: _____ | Percentage: _____ | Location: _____ |
| 5. Crop: _____ | Percentage: _____ | Location: _____ |
| 6. Crop: _____ | Percentage: _____ | Location: _____ |

31. Were the lands on which the Shares were used subirrigated? Yes ____ No ____

32. If possible, please provide a map, sketch, or aerial photograph showing locations of (check if included):

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____ Date: _____

EXHIBIT “K” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Special Warranty Deed – Water Rights)

DRAFT - DO NOT EXECUTE

Exempt from State Documentary Fee

C.R.S. § 39-13-104(a)

Consideration - \$_____

SPECIAL WARRANTY DEED **(Water Rights)**

This SPECIAL WARRANTY DEED is made this ____ day of _____, 2021, by and between LONGS PEAK DAIRY, LLC, a Colorado limited liability company whose address is 45490 County Road 39, Pierce, Colorado 80650 ("Grantor"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose address for purposes of this deed is 1001 11th Avenue, 2nd Floor, Greeley, Colorado, 80631 ("Grantee").

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee and Grantee's heirs and assigns forever all of the water rights described in (a) and (b) below (collectively "Water Rights"):

- (a) The water rights represented by five and one-sixths (5-1/6) shares of capital stock in The Water Supply and Storage Company, evidenced by Stock Certificate No. 6576 (for two (2) shares), (Stock Certificate No. 6581 (for one-half (1/2) of a share), Stock Certificate No. 6603 (for five-twelfths (5/12) of a share), Stock Certificate No. 6614 (for two (2) shares), and Stock Certificate No. 6617 (for one-fourth (1/4) of a share); five and one-sixth (5-1/6) shares of stock in The Collins Ditch Company, evidenced by Stock Certificate No. 844 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares); and five and one-sixth (5-1/6) shares of stock in The Lone Tree Lateral Company, evidenced by Stock Certificate No. 230 (for five and one-sixth (5-1/6) shares of the total represented six (6) shares) (collectively "Shares"), and the water derived therefrom; and
- (b) All beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said Shares, and in addition, and in no way limited by the foregoing, any and all other right, title or interest in The Water Supply and Storage Company, The Collins Lateral Company, and The Lone Tree Lateral Company, represented by said Shares.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said Water Rights above bargained and described with the appurtenances, unto the Grantee and the Grantee's heirs and assigns forever. And the Grantor, for the Grantor and its successors and assigns, does covenant and agree that Grantor shall WARRANT AND FOREVER DEFEND the above-bargained Water Rights in the quiet and peaceable possession of the

Grantee, and the Grantee's successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this deed on this ____ day of _____ 2021.

GRANTOR
Longs Peak Dairy, LLC, a Colorado limited liability company

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2021 by _____, as an authorized representative of Longs Peak Dairy, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____

When recorded return to:

City of Greeley Water and Sewer Department
Attn: Water Resources Division
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631

EXHIBIT “L-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Special Warranty Deed – Varra Farm)

DRAFT - DO NOT EXECUTE

Exempt from State Documentary Fee

C.R.S. § 39-13-104(a)

Consideration - \$ _____

SPECIAL WARRANTY DEED (C.R.S. 38-30-113(1)(b))

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose street address is 1000 10th Street, Greeley, Colorado 80631 ("Grantor"), for the consideration of ***Ten and 00/100*** dollars (\$10.00) in hand paid, hereby sells and conveys to LONGS PEAK DAIRY, LLC, a Colorado limited liability company, whose address is 45490 County Road 39, Pierce, Colorado 80650, the following real property in the County of Weld and State of Colorado, to wit:

The NE ¼ of Section 28, Township 28 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, EXCEPT that portion described in Deed Recorded April 11, 1910 in Book 270 at Page 543 ("Property");

TOGETHER with the appurtenances and warrants title to the same against all persons claiming under the Grantor, but subject to the Statutory Exceptions attached hereto as Exhibit A, EXPRESSLY EXCLUDING AND RESERVING TO THE GRANTOR all water, water rights, ditches, ditch rights, wells, well rights, reservoirs, and reservoir rights, including any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection therewith, represented by two (2) shares of stock in The Water Supply and Storage Company, evidenced by Stock Certificate Number 6721, two (2) shares of stock in The Collins Ditch Company, evidenced by Stock Certificate Number 858, and two (2) shares of stock in The Lone Tree Lateral Company, evidenced by Stock Certificate Number 251, all issued to and in the name of Grantor.

Dated this ____ day of _____ 2021.

THE CITY OF GREELEY, COLORADO
a Colorado home rule municipal corporation

ATTEST:

By: _____

Mayor

By: _____

City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO }
COUNTY OF WELD } ss

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by John Gates as Mayor of The City of Greeley, Colorado, a Colorado home rule municipal corporation, whose signature appears above.

Witness my hand and official seal.

Notary Public
My commission expires: _____

When recorded return to:

Longs Peak Dairy, LLC,
a Colorado limited liability company
45490 County Road 39
Pierce, Colorado 80524

EXHIBIT A
Exceptions

EXHIBIT “L-2” TO PURCHASE AND SALE AGREEMENT
(Longs Peak Dairy)

(See attached Special Warranty Deed – Hasbrouck Farm)

DRAFT - DO NOT EXECUTE

Exempt from State Documentary Fee

C.R.S. § 39-13-104(a)

Consideration - \$_____

SPECIAL WARRANTY DEED

(C.R.S. 38-30-113(1)(b))

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose street address is 1000 10th Street, Greeley, Colorado 80631 ("Grantor"), for the consideration of ***Ten and 00/100*** dollars (\$10.00) in hand paid, hereby sells and conveys to LONGS PEAK DAIRY, LLC, a Colorado limited liability company, whose address is 45490 County Road 39, Pierce, Colorado 80650, the three parcels of real property in the County of Weld and State of Colorado legally described on Exhibit A, attached hereto and incorporated herein by reference (collectively "Property");

TOGETHER with the appurtenances and warrants title to the same against all persons claiming under the Grantor, but subject to the Statutory Exceptions attached hereto as Exhibit B, EXPRESSLY EXCLUDING AND RESERVING TO THE GRANTOR all water, water rights, ditches, ditch rights, wells, well rights, reservoirs, and reservoir rights, including any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection therewith, represented by two and one-fourth (2-1/4) shares of stock in The Water Supply and Storage Company, evidenced by Stock Certificate Number 6698, two (2) shares of stock in The Collins Ditch Company, evidenced by Stock Certificate Number 855, and three (3) shares of stock in The Lone Tree Lateral Company, evidenced by Stock Certificate Number 251, all issued to and in the name of Grantor.

Dated this ____ day of _____ 2021.

THE CITY OF GREELEY, COLORADO
a Colorado home rule municipal corporation

ATTEST:

By: _____

Mayor

By: _____

City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by John Gates as Mayor of The City of Greeley, Colorado, a Colorado home rule municipal corporation, whose signature appears above.

Witness my hand and official seal.

Notary Public
My commission expires: _____

When recorded return to:

Longs Peak Dairy, LLC,
a Colorado limited liability company
45490 County Road 39
Pierce, Colorado 80524

EXHIBIT A
Legal Description of the Property

PARCEL 1

The East 1/3 of the Northwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 52.631 acres more or less; and

PARCEL 2

Lot B of Recorded Exemption No. 0551-22-4-RE 620, recorded June 15, 1983 in Book 999 at Reception No. 01930309, being a part of the Southeast ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, being 151.967 acres more or less; and

PARCEL 3

Lot B of Amended Recorded Exemption No. 0551-22-3-AMRE 1907, recorded February 26, 2001 at Reception No. 2827884, being a part of the East ½ of the Southwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado;

Also described as: The East Half of the Southwest Quarter of Section 22, Township 8 North, Range 65 West of the 6th Principal Meridian, County of Weld, State of Colorado, EXCEPT that parcel described as Lot A of Amended Recorded Exception No. 0551-22-3-AMRE 1907 recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., and EXCEPT that parcel described as Subdivision Exemption No. 593, recorded July 10, 1996 in Book 1555 at Reception No. 2500336, County of Weld, State of Colorado. Said described parcel being 75.623 acres, more or less.

EXHIBIT B
Exceptions

EXHIBIT “M-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Stock Assignment – WSSC Shares)

DRAFT - DO NOT EXECUTEASSIGNMENT OF SHARES

(Stock Certificate No. ____)

For value received, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned, [SELLER], ("Assignor") hereby sell, assign, and transfer unto the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("Assignee"), _____[X] share(s) of the capital stock, [SPECIFY COMMON OR PREFERRED] of [COMPANY] which stock is standing in the name of the undersigned on the books and records of the corporation represented by Certificate No. [____], free and clear of all liens, encumbrances and past-due assessments.

Assignors hereby authorize and empower the secretary of [COMPANY] to transfer said certificate, and to effectuate this assignment and transfer on the books of the [COMPANY].

[SELLER]

Dated: _____

By: _____

Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by _____.

Witness my hand and official seal.

 Notary Public

My commission expires: _____

EXHIBIT “M-2” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Stock Assignment – Collins Shares)

DRAFT - DO NOT EXECUTEASSIGNMENT OF SHARES

(Stock Certificate No. ____)

For value received, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned, [SELLER], ("Assignor") hereby sell, assign, and transfer unto the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("Assignee"), _____[X] share(s) of the capital stock, [SPECIFY COMMON OR PREFERRED] of [COMPANY] which stock is standing in the name of the undersigned on the books and records of the corporation represented by Certificate No. [____], free and clear of all liens, encumbrances and past-due assessments.

Assignors hereby authorize and empower the secretary of [COMPANY] to transfer said certificate, and to effectuate this assignment and transfer on the books of the [COMPANY].

[SELLER]

Dated: _____

By: _____

Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by _____.

Witness my hand and official seal.

 Notary Public

My commission expires: _____

EXHIBIT “M-3” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Stock Assignment – Lone Tree Shares)

DRAFT - DO NOT EXECUTEASSIGNMENT OF SHARES

(Stock Certificate No. ____)

For value received, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned, [SELLER], ("Assignor") hereby sell, assign, and transfer unto the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("Assignee"), _____[X] share(s) of the capital stock, [SPECIFY COMMON OR PREFERRED] of [COMPANY] which stock is standing in the name of the undersigned on the books and records of the corporation represented by Certificate No. [____], free and clear of all liens, encumbrances and past-due assessments.

Assignors hereby authorize and empower the secretary of [COMPANY] to transfer said certificate, and to effectuate this assignment and transfer on the books of the [COMPANY].

[SELLER]

Dated: _____

By: _____

Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT “N-1” TO PURCHASE AND SALE AGREEMENT

(Longs Peak Dairy)

(See attached Bargain and Sale Deed – Varra Farm Wells)

DRAFT - DO NOT EXECUTE

Exempt from State Documentary Fee

C.R.S. § 39-13-104(a)

Consideration - \$_____

BARGAIN AND SALE DEED FOR WATER RIGHTS

(C.R.S. § 38-30-115)

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose street address is 1000 10th Street, Greeley, Colorado 80631, for the consideration of Ten and 00/100 dollars (\$10.00) in hand paid, hereby sells and conveys to LONGS PEAK DAIRY, LLC, a Colorado limited liability company, whose address is 45490 County Road 39, Pierce, Colorado 80650, the following groundwater wells and associated water rights and interests located in the NE 1/4 of Section 28, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, as represented by the following court decrees and Well Permits from the Colorado Division of Water Resources:

- a. Varra Well #1: Permit No #0101, together with the rights to tributary groundwater decreed on May 2, 1974, as Varra Well #1 - #0101, in Case No. W-4530, District Court, Water Division No. 1, Colorado, with an appropriation date of May 31, 1940, for irrigation in the amount of .769 cubic feet per second; and
- b. Varra Well #2: Permit No #04188-F, together with the rights to tributary groundwater decreed on May 2, 1974, as Varra Well #2 - #04188-F, in Case No. W-4530, District Court, Water Division No. 1, Colorado, with an appropriation date of May 15, 1963, for irrigation in the amount of .466 cubic feet per second; and
- c. Varra Well #3: Permit No #04313 - F, together with the rights to tributary groundwater decreed on May 2, 1974, as Varra Well #3 - #04313-F, in Case No. W-4530, District Court, Water Division No. 1, Colorado, with an appropriation date of May 15, 1963, for irrigation in the amount of .308 cubic feet per second; and
- d. Varra Well #4: Permit No #5167 - F, together with the rights to tributary groundwater decreed on May 2, 1974, as Varra Well #4 - #5167-F, in Case No. W-4530, District Court, Water Division No. 1, Colorado, with an appropriation date of March 15, 1964, for irrigation in the amount of .466 cubic feet per second.

And any and all other water rights and related ditches, pipelines, fixtures, easements, appurtenances and other rights and interests associated with such water rights.

Dated this ____ day of _____ 2021.

THE CITY OF GREELEY, COLORADO
a Colorado home rule municipal corporation

ATTEST:

By: _____

Mayor

By: _____

City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
COUNTY OF WELD) ss

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by John Gates as Mayor of The City of Greeley, Colorado, a Colorado home rule municipal corporation, whose signature appears above.

Witness my hand and official seal.

Notary Public
My commission expires: _____

When recorded return to:

Longs Peak Dairy, LLC,
a Colorado limited liability company
45490 County Road 39
Pierce, Colorado 80524

EXHIBIT “N-2” TO PURCHASE AND SALE AGREEMENT
(Longs Peak Dairy)

(See attached Bargain and Sale Deed – Hasbrouck Farm Wells)

DRAFT - DO NOT EXECUTE

Exempt from State Documentary Fee

C.R.S. § 39-13-104(a)

Consideration - \$_____

BARGAIN AND SALE DEED FOR WATER RIGHTS

(C.R.S. § 38-30-115)

THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose street address is 1000 10th Street, Greeley, Colorado 80631, for the consideration of ***Ten and 00/100*** dollars (\$10.00) in hand paid, hereby sells and conveys to LONGS PEAK DAIRY, LLC, a Colorado limited liability company, whose address is 45490 County Road 39, Pierce, Colorado 80650, the following groundwater wells and associated water rights and interests located in Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado, as represented by the following court decrees and well permits from the Colorado Division of Water Resources:

- a. Roseberry Well No. 1-11260, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 1-11260 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1936, for irrigation in the amount of 1.01 cubic feet per second;
- b. Roseberry Well No. 2-11261, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 2-11261 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1930, for irrigation in the amount of 0.444 cubic feet per second; and,
- c. Roseberry Well No. 3-11262, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 3-11262 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1950, for irrigation in the amount of 0.70 cubic feet per second.
- d. Dill Well No. 1-9303F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 1-9303F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 27, 1965, for irrigation in the amount of 0.222 cubic feet per second;
- e. Dill Well No. 2-9304F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 2-9304F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 28, 1965, for irrigation in the amount of 0.222 cubic feet per second;
- f. Dill Well No. 3-9305F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 3-9305F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1965, for irrigation in the amount of 0.433 cubic feet per second;
- g. Dill Well No. 4-9306-F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 4-9306-F in Case No. W-4379, District Court, Water

Division No. 1, Colorado, with an appropriation date of April 29, 1965, for irrigation in the amount of 0.433 cubic feet per second;

- h. Dill Well No. 5, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 5 in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1944, for irrigation in the amount of 0.222 cubic feet per second;
- i. Dill Well No. 6, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 6 in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1944, for irrigation in the amount of 0.222 cubic feet per second;
- j. Henry Dill Pumping System Plant No. 1, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 1 (15361R) in Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1945, for irrigation in the amount of 1.12 cubic feet per second; and
- k. Henry Dill Pumping System Plant No. 2, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 2 (15362R) in Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1925, for irrigation in the amount of 0.55 cubic feet per second; and
- l. Henry Dill Pumping System Plant No. 3, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 3 (15363R) in Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of June 30, 1951, for irrigation in the amount of 0.77 cubic feet per second.

And any and all other water rights and related ditches, pipelines, fixtures, easements, appurtenances and other rights and interests associated with such water rights.

Dated this ____ day of _____ 2021.

THE CITY OF GREELEY, COLORADO
a Colorado home rule municipal corporation

ATTEST:

By: _____

Mayor

By: _____

City Clerk

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by John Gates as Mayor of The City of Greeley, Colorado, a Colorado home rule municipal corporation, whose signature appears above.

Witness my hand and official seal.

Notary Public

My commission expires: _____

When recorded return to:

Longs Peak Dairy, LLC,
a Colorado limited liability company
45490 County Road 39
Pierce, Colorado 80524

Hasbrouck and Varra Farms Property Divestment

Presented to Greeley City Council

By Greeley Water & Sewer Dept.

June 15, 2021

Background

- On May 19, 2021 the Greeley Water and Sewer Board approved a purchase and sale agreement with Longs Peak Dairy for acquisition of 5 1/6 shares of Water Supply and Storage Company (WSSC)
 - WSSC is the number one target for the city's acquisition program
 - Agreement included a land trade

Background

- Proposed sale of two properties (Hasbrouck and Varra farms) to Longs Peak Dairy
 - Farms are valued at approximately \$2,000,000
 - Sale reduces cash outlay for WSSC purchase
 - Water and Sewer Board recommended to City Council to approve divestment

Hasbrouck & Varra Farms

- Hasbrouck Farm:
 - 282 +/- acres
 - \$1,100,000
- Varra Farm:
 - 156 +/- acres
 - \$900,000



Farm Divestment

- Longs Peak Dairy will continue to use the farms for agriculture
- Buyer Pays for diligence, no brokerage
- City obtains dry-up and revegetation covenants
- Leaseback for both farms
 - 10 year primary lease of water rights
 - Lease may be extended for up to 5, 1-year terms

Recommended Action

Staff recommends introducing the ordinance and scheduling a public hearing and final reading for July 6, 2021

Questions?

Council Agenda Summary

Key Staff Contact: John Karner, Finance, 970-350-9730

Title:

Introduction and first reading of an ordinance making supplemental assessments against the lots and lands in Local Improvement District No. 463 to cover the costs of the maintenance of landscaping around the perimeter of Range View Estates (35th Avenue and 20th Street) in the City of Greeley, Colorado

Summary:

Adjusting the annual cost in the ordinance making supplemental assessments against the lots and land in Local Improvement District No. 463 to cover the costs of the maintenance and landscaping around the perimeter of Range View Estates (35th Ave and 20th St). Annual costs are increasing from the current amount of \$9,988 to \$15,400 and the fee collected for the costs incurred by the city is increasing from a flat fee of \$132 to a fee of 5%.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	No
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

This ordinance has been reviewed by the City Attorney's Office. Consideration of this matter is a legislative process.

Other Issues and Considerations:

This ordinance is was first adopted on December 3, 2002 and has been reviewed every three years since and adjustments have been made when requested by the Rangeview HOA.

Strategic Work Program Item or Applicable Council Priority and Goal:

Image: Reinforce Greeley's vision as an attractive and vibrant community in which to live, learn, work and play. – Maintenance of landscaping around the perimeter of Rangeview Estates contributes to the beauty of Greeley.

Safety: Manage the health, safety and welfare in a way that promotes a sense of security and well-being for residents, businesses and visitors.

Economic Health & Development: Foster and maintain public and private investment in business development.

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for July 20, 2021.

Attachments:

Ordinance

THE CITY OF GREELEY, COLORADO
ORDINANCE NO. ____ 2021

AN ORDINANCE MAKING SUPPLEMENTAL ASSESSMENTS AGAINST THE LOTS AND LANDS IN LOCAL IMPROVEMENT DISTRICT NO. 463 TO COVER THE COSTS OF THE MAINTENANCE OF LANDSCAPING AROUND THE PERIMETER OF RANGE VIEW ESTATES (35TH AVENUE AND 20TH STREET) IN THE CITY OF GREELEY, COLORADO

WHEREAS, the City of Greeley, Colorado adopted Ordinance No. 62, 2002, on December 3, 2002, thereby creating Improvement District 463 in order to provide for the installation and maintenance of landscaping in the right-of-way around the perimeter of Range View Estates in the City of Greeley, Colorado; and

WHEREAS, the Greeley City Council found that the improvements authorized by the Improvement District 463 specially benefit the properties in the improvement district and provide no benefit to the general public; and

WHEREAS, the installation of the landscaping authorized by Ordinance No. 62, 2002, was completed at a total cost of \$82,173.52 and assessed equally against the lots and lands included in Improvement District 463; and

WHEREAS, Ordinance No. 62, 2002 set the total annual costs for maintenance of the landscaping at \$5,250.00 and provided that the annual maintenance costs should be assessed equally against the lands and lots in the special improvement district in accordance with Sections 18-384 through 18-387 (former citations were Sections 13.44.050 through 13.44.080) of the Greeley Municipal Code; and

WHEREAS, the City of Greeley, Colorado, adopted Ordinance No. 8, 2004, on February 17, 2004, set the annual maintenance costs of the landscaping at \$7,500.00; and

WHEREAS, the City of Greeley, Colorado, adopted Ordinance No. 23, 2017, on June 27, 2017 set the maintenance cost of landscaping at \$9,988.00; and

WHEREAS, both Ordinance No. 62, 2002 and Ordinance No 8, 2004 provided that the annual cost should be reviewed every three years for adequacy and adjusted accordingly; and

WHEREAS, the annual cost has not been adjusted since 2017; and

WHEREAS, in establishing the collection of annual maintenance costs as part of the local improvement costs, Ordinance No. 62, 2002 provided that these costs should be assessed in accordance with Sections 18-384 through 18-387 of the Greeley Municipal Code; and

WHEREAS, Section 18-387 of the Greeley Municipal Code (entitled "Scope of costs included"), provides that the costs of local improvements to be assessed against the lots in a local improvement "shall include the expense of ... postage, collection and any other incidental costs directly related to the creation of the improvement district and the making of assessments ... "; and

WHEREAS, the City incurs costs associated with the collection of the annual landscape maintenance costs, which costs include postage and staff time associated with collection which should be recouped by the City in the form of a fee included in the total amount of the annual landscape maintenance costs; and

WHEREAS, the City has determined the annual fee for postage and collection associated with the Improvement District 463 shall be equal to five percent (5%) of the annual landscape cost; and

WHEREAS, the City has obtained updated costs from the members of the Range View neighborhood which accurately reflect the annual landscape costs in the amount of \$15,400.00; and

WHEREAS, the total costs of \$16,170 represent a reasonable annual maintenance amount to be assessed against the properties located in Improvement District 463.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The total annual costs of \$16,170 appears to be a reasonable annual maintenance cost, which amount shall include the annual costs for maintenance of the landscaping and the annual costs of collection as authorized by Greeley Municipal Code Section 18-387. This annual cost shall be reviewed every three (3) years from the date of the assessing ordinance, for adequacy and shall be adjusted accordingly. Collections of maintenance assessments shall be remitted to the Range View Homeowners Association upon request. The Range View Homeowners Association shall be responsible for contracting the maintenance of the landscaping. The City of Greeley has the right to audit the books of the Homeowners Association to determine actual costs.

Section 2. The following lots and lands together with the street addresses of those lots and lands and the apparent owners within the City of Greeley, Colorado, all being within Improvement District No. 463 are hereby assessed as follows:

OWNER:	Thomas E. Royer/Kirtley W. Royer
OWNER'S	PO Box 336091, Greeley, Colorado 80633
ADDRESS:	
PROPERTY	1943 Homestead Road, Greeley, Colorado
ADDRESS:	80634
PARCEL:	095911410005
ANNUAL MAINTENANCE	\$367.50
COSTS	

OWNER:	Larry L. Paulsen
OWNER'S	1939 Homestead Road, Greeley, Colorado
ADDRESS:	80634
PROPERTY	1939 Homestead Road, Greeley, Colorado
ADDRESS:	80634
PARCEL:	095911410006

ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Robert O. Kron/Judy R. Kron
 OWNER'S 1929 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1929 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911410002
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: James A. Webster/Sally J. Webster
 OWNER'S 1913 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1913 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911410001
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Bond Lila R. Revocable Trust
 OWNER'S 1903 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1903 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416006
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Patrick Lujan/Nicole Lujan
 OWNER'S 1902 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1902 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416004
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Evelyn Ellorin Pieterick Living Trust
 OWNER'S 1906 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1906 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416003
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Jeffrey Sedillos
 OWNER'S 1849 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1849 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416002
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Wendy K. Spencer
 OWNER'S 1845 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1845 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416001
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Richard Recor/Verna Recor
 OWNER'S 1836 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1836 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416009
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Shanna Lynn White/Slade A Jones
 OWNER'S 1848 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1848 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416008
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Rebecca S. Edgren
 OWNER'S 1900 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1900 Homestead Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911416011
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Royal R. Lovell/Angela Lovell
 OWNER'S 1847 Homestead Road, Greeley, Colorado
 ADDRESS: 80634

PROPERTY ADDRESS: 1847 Homestead Road, Greeley, Colorado
 80634
 PARCEL: 095911416005
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Benjamin Rudolph/Kimberly Rudolph
 OWNER'S ADDRESS: 1912 Homestead Road, Greeley, Colorado
 80634
 PROPERTY ADDRESS: 1912 Homestead Road, Greeley, Colorado
 80634
 PARCEL: 095911409013
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Slaughter Judith A. Trust
 OWNER'S ADDRESS: 3541 Wagon Trail Road, Greeley, Colorado
 80634
 PROPERTY ADDRESS: 3541 Wagon Trail Road, Greeley, Colorado
 80634
 PARCEL: 095911409012
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Larry Fay Bethards/Connie Jean Bethards
 Kay Joanne Mehl/Janet Gay Mehl
 OWNER'S ADDRESS: 3535 Wagon Trail Road, Greeley, Colorado
 80634
 PROPERTY ADDRESS: 3535 Wagon Trail Road, Greeley, Colorado
 80634
 PARCEL: 095911409011
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Peter E Graham/Judith Anne Graham
 OWNER'S ADDRESS: 3531 Wagon Trail Road, Greeley, Colorado
 80634
 PROPERTY ADDRESS: 3531 Wagon Trail Road, Greeley, Colorado
 80634
 PARCEL: 095911409009
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Robert E. Banghart/Linda Love Kendrick
 Banghart
 OWNER'S ADDRESS: 3530 Range View Road, Greeley, Colorado
 80634
 PROPERTY ADDRESS: 3530 Range View Road, Greeley, Colorado
 80634

PARCEL: 095911409005
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Kelly Lawrence Martinez/Nova Renee
 Martinez
 OWNER'S 3540 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3540 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911409006
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Anne M O'Connor/Joseph D O'Connor
 OWNER'S 3550 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3550 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911409001
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Joshua J. Dollard/Nicole M. Dollard
 OWNER'S 1810 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1810 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407001
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Ryan Kurtz
 OWNER'S 1816 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1816 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407002
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Bradford N. Edgren/Nannelle R. Edgren
 OWNER'S 1822 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1822 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407003
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Jennifer L Reeve
 OWNER'S 1828 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1828 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407004
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Scott L. Schuttenberg/Barbara M.
 Schuttenberg
 OWNER'S 1834 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1834 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407005
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Donna Lee Lakin
 OWNER'S 1840 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1840 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407006
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Matthew E Brown/Susan M Brown
 OWNER'S 1846 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1846 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407007
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Donald L. Ericson/Barbara J. Ericson
 OWNER'S 1854 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 1854 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911407012
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Ali Emranl

OWNER'S
ADDRESS: 1864 Frontier Road, Greeley, Colorado
PROPERTY 80634
ADDRESS: 1864 Frontier Road, Greeley, Colorado
PARCEL: 80634
095911407010
ANNUAL MAINTENANCE \$367.50
COSTS

OWNER: William L. Rietfors/Dana R. Rietfors
OWNER'S 3507 Range View Road, Greeley, Colorado
ADDRESS: 80634
PROPERTY 3507 Range View Road, Greeley, Colorado
ADDRESS: 80634
PARCEL: 095911407011
ANNUAL MAINTENANCE \$367.50
COSTS

OWNER: Mark Steen Daviet/Mary Patricia Daviet
OWNER'S 3527 Range View Road, Greeley, Colorado
ADDRESS: 80634
PROPERTY 3527 Range View Road, Greeley, Colorado
ADDRESS: 80634
PARCEL: 095911408003
ANNUAL MAINTENANCE \$367.50
COSTS

OWNER: Frontier Capital LLC
OWNER'S 1821 Frontier Road, Greeley, Colorado
ADDRESS: 80634
PROPERTY 1821 Frontier Road, Greeley, Colorado
ADDRESS: 80634
PARCEL: 095911408002
ANNUAL MAINTENANCE \$367.50
COSTS

OWNER: Janet S. Listen Living Trust
OWNER'S 119 Brubaker Lane, Laramie, Wyoming
ADDRESS: 82070
PROPERTY 1833 Frontier Road, Greeley, Colorado
ADDRESS: 80634
PARCEL: 095911408001
ANNUAL MAINTENANCE \$367.50
COSTS

OWNER: Bret Naber/Janae Naber
OWNER'S 1841 Frontier Road, Greeley, Colorado
ADDRESS: 80634
PROPERTY 1841 Frontier Road, Greeley, Colorado
ADDRESS: 80634

PARCEL: 095911408005
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Michael A. Carmichael/Nina K. Carmichael
 OWNER'S PO Box 1338, Platteville, Colorado 80651
 ADDRESS:
 PROPERTY 1855 Frontier Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911408004
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Jack Sattler
 OWNER'S 3502 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3502 Range View Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411009
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Ronald A. Kingsford/Lisa M. Kingsford
 OWNER'S 3514 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3514 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411001
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Julie D Herren/Casey J Herren
 OWNER'S 3518 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3518 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411008
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Jeremy Grover/Tracie Grover
 OWNER'S 3522 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3522 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411014
 ANNUAL MAINTENANCE \$367.50
 COSTS

OWNER: Kaan Inceoglu/Kimberly Lynn Inceoglu
 OWNER'S 3526 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3526 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411013
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Mary-Jo Dickinson/David Dale Dickinson
 OWNER'S 3530 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3530 Wagon Trail Place, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411004
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Stephen E Thomas/Elizabeth P Thomas
 OWNER'S 3534 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3534 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411003
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Rachel E. Payne/Caleb A. Payne
 OWNER'S 3538 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3538 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411002
 ANNUAL MAINTENANCE COSTS \$367.50

OWNER: Diane W. Miller
 OWNER'S 3542 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PROPERTY 3542 Wagon Trail Road, Greeley, Colorado
 ADDRESS: 80634
 PARCEL: 095911411001
 ANNUAL MAINTENANCE COSTS \$367.50

Section 4. This ordinance shall be effective five (5) days after its final publication as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS ____ DAY OF
_____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

Council Agenda Summary

Key Staff Contact: Adam Prior, Water & Sewer Chief Engineer, 970-573-0218

Title:

Consideration of a change order in the amount of \$395,737.00 to the Brown and Caldwell contract for the Concept Design for the Terry Ranch Water Supply Project, bringing the revised contract amount from \$1,411,009.00 to \$1,806,746.00

Summary:

The City entered into Work Order #8 to the Brown and Caldwell Master Agreement on March 23, 2020 in the amount of \$1,234,729.00. This Work Order was for Advisory Services and was originally intended for the Milton Seaman Water Supply Project EIS. The Work Order was subsequently transferred to the Terry Ranch project on August 19, 2020. Change Order #1 was issued on January 22, 2021 in the amount of \$176,280.00.

Change Order #2 is being presented for Council approval. This Change Order is a direct result of an expanded scope of work related to unforeseen design and costing requirements for the conceptual design of the Terry Ranch Project. Work covered under this change order has previously been completed.

The design of the Terry Ranch Project was conducted in large part to establish the cost of the project so that the Water & Sewer Board and City Council could make an informed decision whether to close on the purchase of the project within the time limitations of the Terry Ranch Master Purchase and Sale Agreement due diligence period. Board and Council, along with the public, posed several un-scoped inquiries on infrastructure costs. Those inquiries drove the city to enhance the depth of the concept design work, and thereby increase the city's level of confidence in the infrastructure cost calculations. In addition to the expanded scope, the public engagement aspect of the project required far more meetings and presentations by the consultant than originally scoped.

This additional work was required to respond accurately and timely to citizen inquiries, and constituted urgent, critical path work necessary for Board and City Council decision making. Given the time limitations of the Terry Ranch Master Purchase and Sale Agreement due diligence period, it was infeasible to halt work to complete a change order request prior to work being completed.

The enhanced scope of work allowed a thorough design and cost estimate to complement the other diligence work being performed on the project. Multiple aspects of the project design were enhanced, including: moving from a 15% to a 30% design of pipeline/transmission facilities; completing treatment, pump, and valving site layouts; conducting geotechnical work for tunneling; carrying out additional topographical surveys; performing more thorough hydraulics analyses; conducting a 30-day pilot treatment plant test; and initiating a power requirement and supply study with regional power providers.

Due to the change in scope, this change order represents a 28% increase to the current contract amount as revised after approval of Change Order #1. Cumulatively, Change Orders #1 and #2 have added 46% to the original contract amount, thus Council approval of Change Order #2 is required.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$395,737.00
What is the annual impact?	None
What fund of the City will provide Funding?	422- Water Construction Fund
What is the source of revenue within the fund?	Plant Investment Fees
Is there grant funding for this item?	No
If yes, does this grant require a match?	N/A
Is this grant onetime or ongoing?	N/A
Additional Comments:	

Legal Issues:

Greeley Municipal Code Section 6-486 requires that cumulative change orders that would add 25% or more to the original contract amount must be approved by City Council I.

Other Issues and Considerations:

None.

Strategic Work Program Item or Applicable Council Priority and Goal:

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

1. Approve change order as recommended,
2. Amend change order and approve as amended,
3. Deny change order, or
4. Continue item to a date specific.

Council's Recommended Action:

A motion to approve Change Order #2.

Attachments:

Change Order #2

Agreement for Consulting and Professional Services



CHANGE ORDER FORM

Project Information

Change Order #:	2	Date:	June 1, 2021
Project Name:	Terry Ranch Water Development		
Bid Number:	FL-16-04-076C	Dept/Division:	Water & Sewer
Original Budget Unit #:	4050088088000000	PO #:	20000533
New Budget Unit Number Added:	422-1060-88007		
Project Manager:	Peter Champion	Title:	Civil Engineer III

Contractor/Consultant Information

Contractor/Consultant:	Brown and Caldwell	Phone /Extension:	
------------------------	---------------------------	-------------------	--

The CONTRACTOR/CONSULTANT is hereby directed to perform the WORK described in the CONTRACT for design/construction as amended by this CHANGE ORDER.

See attached **8** sheets with full explanation for the change order.

Compensation to Contractor/Consultant

The original contract sum was:	\$1,234,729.00
The net change by previous change order was:	\$176,280.00
The contract sum prior to this change order was:	\$1,411,009.00
The contract sum will be: (See List) Increased	\$395,737.00
The new contract sum, including this change order is:	\$1,806,746.00
The contract time will be: (See List) Unchanged	
The new date for project completion is:	

This CHANGE ORDER is intended to, and the OWNER agrees that it shall, fairly and adequately compensate the CONTRACTOR/CONSULTANT for the extra direct costs (time and materials, etc.) as well as all expenses and damages which may result from any delays, suspensions, stretch-outs, scheduling, inefficiencies and accelerations in the WORK associated with this CHANGE ORDER, and the CONTRACTOR/CONSULTANT releases the OWNER from any claims for such expenses and damages.

This CHANGE ORDER is intended to, and the CONTRACTOR/CONSULTANT agrees that it does, provide the CONTRACTOR/CONSULTANT a reasonable and adequate period of time in which to complete the WORK in accordance with the CONTRACT for establishment of policies, as amended by this CHANGE ORDER, and the CONTRACTOR/CONSULTANT releases the OWNER from any claims for additional time to perform the WORK associated with this CHANGE ORDER.

The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

Signatures for Council (Council minutes need to be attached)

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in two (2) original counterparts as of the day and year first above written.

Approved as to Substance	Reviewed as to Legal Form
City Manager	City Attorney
Certification of Contract Funds Availability	Departmental Certification
Director of Finance	Department Director
Purchasing Official	Project Manager

Certification of Content by Contractor/Consultant

Representative of Contractor/Consultant	Title

Additional Approval:

Budget **Supervisor** **CPC** **Finance** _____

Cumulative change orders totalling \$572,017 for a total of 46.3%.

5/5/2018

CHANGE ORDER FORM



Project Information

Change Order #:	2
Project Name:	Terry Ranch Concept Design
Date:	6/1/2021
Project Manager:	Peter Champion

Change Order Justification

Location	
Summary of Change Order	This change order is a direct result of an expanded scope of work related to unforeseen design and costing requirements for the conceptual design of the Terry Ranch Project. Work covered under this change order has previously been completed. The design of the Terry Ranch Project was conducted in large part to establish the cost of the project so that the Water & Sewer Board and City Council could make an informed decision whether to close on the purchase of the project within the time limitations of the Terry Ranch Master Purchase and Sale Agreement due diligence period. Board and Council, along with the public, posed several un-scoped inquiries on infrastructure costs. Those inquiries drove the city to enhance the depth of the concept design work, and thereby increase the city's level of confidence in the infrastructure cost calculations. In addition to the expanded scope, the public engagement aspect of the project required far more meetings and presentations by the consultant than originally scoped. This additional work was required to respond accurately and timely to citizen inquiries, and constituted urgent, critical path work necessary for Board and City Council decision making. Given the time limitations of the Terry Ranch Master Purchase and Sale Agreement due diligence period, it was infeasible to halt work to complete a change order request prior to work being completed. The enhanced scope of work allowed a thorough design and cost estimate to complement the other diligence work being performed on the project. Multiple aspects of the project design were enhanced, including: moving from a 15% to a 30% design of pipeline/transmission facilities; completing treatment, pump, and valving site layouts; conducting geotechnical work for tunneling; carrying out additional topographical surveys; performing more thorough hydraulics analyses; conducting a 30-day pilot treatment plant test; and initiating a power requirement and supply study with regional power providers.
Why was this not in original contract?	The complexity of the design during the diligence period was greater than originally anticipated. As the diligence period progressed, additional design and investigation was required to respond accurately and timely to citizen inquiries, and for Board and City Council decision making.
Budget Impact/Funding	422- Water Construction Fund
Impact to project schedule	None
Detailed Explanation	The enhanced scope of work allowed a thorough design and cost estimate to complement the other diligence work being performed on the project. Multiple aspects of the project design were enhanced, including: moving from a 15% to a 30% design of pipeline/transmission facilities; completing treatment, pump, and valving site layouts; conducting geotechnical work for tunneling; carrying out additional topographical surveys; performing more thorough hydraulics analyses; conducting a 30-day pilot treatment plant test; and initiating a power requirement and supply study with regional power providers.



Council has increased the limits for signature authority. Below are the new limits based on CUMMULATIVE change orders:

https://library.municode.com/co/greeley/codes/municipal_code?nodeId=TIT4REFI_CH4.20PU_ARTIIIISOSECOFO_4.20.160CHOR

Dollars related to original contract.	<=25%			>25%		
	\$50,000.01-			\$50,000.01-		
	<\$50,000	\$100,000	>\$100,000	<\$50,000	\$100,000	>\$100,000
Council						X
City Manager			X		X	X
City Attorney			X		X	X
Director of Finance			X		X	X
Purchasing Official		X	X		X	X
Department Director	X	X	X	X	X	X
Project Manager	X	X	X	X	X	X

Greeley Vendor No: 006685
BC Project No: 155045

AMENDMENT NO. TWO TO THE
AGREEMENT FOR CONSULTING AND
PROFESSIONAL SERVICES
BETWEEN CITY OF GREELEY
AND BROWN AND CALDWELL
FOR OWNER'S ENGINEER – CONCEPTUAL DESIGN
Work Order 8 – Terry Ranch Water Supply Program - PO No. 20000533

THIS AMENDMENT NO. TWO to the Agreement for Consulting and Professional Services between City of Greeley, hereinafter referred to as "Client", and Brown and Caldwell, a California corporation, hereinafter referred to as "Consultant," is made and entered into this 4th day of March, 2021.

RECITALS:

WHEREAS, Client and Consultant entered into an agreement (Work Order 8) for consulting and professional services dated March 23, 2020 (hereinafter referred to as the "Agreement") with notice to proceed on June 4, 2020;

WHEREAS, Client has requested changes in the Scope of Services;

NOW, THEREFORE, Client and Consultant agree to amend the Agreement as follows:

I. SCOPE OF CONSULTING SERVICES

The Scope of Services is as follows:

Phase 100 – Project Management

- A. Project management for the work tasks below.
- B. Provide peer review coordination and meetings. Approved comments from the peer review will be included in the draft review comments. Work includes sharing documents and 3 Consultant personnel attending a meeting on January 18, 2021 to discuss results and provide background.

Phase 200 – Water Board Updates: Provide added work for Greeley City Council, Water and Sewer Board, public meetings and assistance with slides for Greeley's presentations. Includes meetings/discussions with members of the public. Original scope only included one update/presentation and only one other person assisting. Current scope includes:

- Water and sewer board meeting October 13, 2020
- Water and sewer supervisors meeting October 1, 2020
- Water and sewer board meeting November 18, 2020
- Open house December 1, 2020
- Water and sewer board meeting December 16, 2020
- City council presentation January 16, 2021

- Open house planned February 10, 2021
- Water and sewer board meeting planned February 17, 2021
- City council presentation planned March 2, 2021

Phase 300 – Program Component Selection: Use the remaining amount of this budget item to adjust updated Terry Ranch operational expectations and cost phasing adjustments. Originally completed an initial evaluation, but the technical memorandum (TM) was not used because selecting an alternative route was not considered further due to permitting concerns in other counties. Completion of the TM for program component selection will not be pursued further.

Added work includes applying the remaining costs in this work item to a different phase of work. Specifically, this will contribute toward the TM, entitled, “Program Flows by Milestone” and other concept report documents with this information.

Phase 410 – Program Concept Design

Pipelines Transmission and Wellhead – 411 and 412

- The original scope called for a desktop study for both the wellhead piping and transmission piping. The actual work performed includes alignment drawings of this work showing the utilities, easements and horizontal alignment. The length planned was 32 miles, but work was added to extended length of transmission pipeline to include the backbone of well piping. Added approximately 10.5 miles of pipeline (total 42.5 miles, and 33 added drawings).
- The Client made the decision to place the alignment in a private easement rather than on public right of way. Impacts to surveying and geotechnical, as well as added easements and investigation. This change occurred later in the project.
- As an impact of placing the delays to surveying, the design needed to progress to meet the approvals schedule. To do this an iterative process was used that evaluated available data (rather than the survey data) to provide the site elevations and alignment drawings for the pipeline. The hydraulic model, property sites and pipeline alignment drawings were completed using this data for the draft submission. These items will be verified and likely updated as part of the final report when the survey data becomes available. Impacts are expected to include adjustments to property lines and easements when compared with the survey data (lidar/photographs).
- The impact of the alignment selection includes developing class D utilities and the pipeline alignment for the first 6 miles rather than using the surveyed marks. As survey data and class B utility locates become available, the work will update the alignment drawings with new survey data for the final requiring a comparison and adjustment of utilities.

Greenfield facilities – 413

- Technical documents for Greeley’s coordination with landowners: Modified sites and layouts to meet the needs of subsequent meetings with landowners and the State Land Board (SLB). Provided updated drawings and coordination for easement discussions with property owners. Modified pipeline route and Cactus Hill site to meet this request. Work includes adjusting piping layouts at the transmission pumping station, added 4 drawings for SLB easements, adjusted site location for the PRV station. Original scope included only a desktop analysis and site visits for property selection.

Geotechnical investigation – 420

- Pollution liability insurance. Changed the drilling subconsultant to include a driller who was able to provide appropriate insurance. Pollution liability insurance was an added requirement under

the Master Services Agreement on June 17, 2020 and impacted this work order. Subconsultant had proposed based on a driller who was providing insurance, but not this specific insurance. Providing rework to accept new driller and verify contracting requirements.

- G. Additional coordination to provide borings on private property instead of public right-of-way. This included a schedule delay, coordination with landowners and site restoration requirements that were not originally foreseen.

Topographical Surveying – 430

- H. Modified/updated route and surveying needs to meet final alignment selection.
- I. Additional coordination to provide survey targets and access on private property instead of public right-of-way. This included a schedule delay, and coordination with landowners. Includes a total of 68 properties where access was necessary. Original scope assumed work would generally be in public right of way.

Hydraulics – 450

- J. Revised the hydraulics and flows late in the design process. This included changing from 16 to 24 cfs for the injection flows and changing from 40 to 45 cfs for the supply flows. This work is further impacted by the adjustment of milestones and intermediate flows. Reference Greeley memorandum, Terry Ranch Hydrology Analysis Overview, June 15, 2020.
- K. Based on the new flows, added 5 groundwater wells and network piping for these wells. Updated modelling and analyzed options to optimize the arrangement. Includes changes to drawings, comparison costs for pumping systems, and treatment processes. Includes added model runs for these changed conditions.
- L. Analyze the system using available data rather than the survey data. This benefited the project by having the analysis completed in a timely manner, but a second analysis added effort requiring updates to the report.

Treatment processes – 460

- M. Additional coordination for water quality testing. Data from multiple labs, sometimes with differing test methods used unexpectedly. Coordination includes updating evaluations from multiple additions of data. As described in WO8, scope of work, basis of scope, items 6 and 8, this effort was originally excluded.
- N. Added a phone call and review of the ion exchange (I-X) process with other cities.
- O. Added coordination and data collected from the piloting process. While the pilot treatment plant has been budgeted in a separate work order, this had impacts to the concept design. This includes re-analysis of piloting data for both the treatment process (I-X) and the injection piloting and updating the report. Data was also added to the full data set from these pilot testing items.
- P. Added work to evaluate the move or elimination of the equalization (EQ) tank and relocate the radon removal system. Includes increased analysis for the process to assess impacts of other type of removal, (packed tower, granular activated carbon, etc.) and its move to different locations. Includes evaluation of in-plant pumping station elimination options.
- Q. Added work to evaluate the staffing needs for the overall project. This was used to set the overall project operational costs.

- R. Added a more work to summarize the water quality data. Includes data from multiple sources that were not part of the original work, including the treatment piloting, the injection piloting, the corrosion control assessment, the ASR bench scale testing in addition to the original data from the inspection activities. Produce a TM to be added to the final report. This work allows a single source of data for the future project efforts.

Power supply – 472

- S. Added work to coordinate with Poudre Valley REA and to evaluate the inclusion of a central metering facility for the wellhead area. Includes coordinating a long-term study performed by Poudre Valley REA and multiple meetings.
- T. Changed flows (16 to 24 cubic feet per second (cfs) for injection and 40 to 45 cfs for supply) and number of wells. This change in flow required rework for the power supply, coordination, and drawing updates.
- U. Added work for developing power supply for 2 pumping stations at a site (Gold Hill Booster and the Transmission station). Included coordination of power supply needs for two different milestones and two different levels of power needs (medium voltage vs low voltage).
- V. Added work to provide two separate (low voltage) power feeds for the injection system and the supply system due to the span of milestones. Modified technical memorandum and single-line drawings to meet this need.

Opinion of probable cost – 490

- W. Included the estimate of operational cost in addition to the construction cost. This was not originally part of the work. The work included a comparison to existing Greeley treatment plants.
- X. Provided cost data for specific milestones and comparison to previous estimates. These were adjusted to meet modified flows/milestones based on comments from Greeley's June 15, 2020 memo and during the comments from the draft report. Work was also adjusted to meet presentations necessary for board meetings and other public presentations.

Phase 500 – Wrap-up Tasks

Poudre Valley REA Long-Term Study – 510

- A. Provide an administrative accommodation to implement Poudre Valley REA as a vendor. This work includes Poudre Valley REA performing a long-range study to supply electricity to the Terry Ranch Water Supply Project components in their service area.
- B. The work will be scoped, directed, reviewed and performed by Poudre Valley REA. Poudre Valley REA is responsible for the services and direction and deliverables of this work. No deliverables will be provided from Consultant on this item, all work will be done by Poudre Valley REA.

On-Call Support – 520

- C. Provide miscellaneous/on-call support of items that support Greeley's overall objective to provide design and implementation of the Terry Ranch Water Supply Project. Activities that may fall within this task include meetings with Water and Sewer Board members, City Council members, Greeley staff, or the general public. Other items could include additional drawings or design analyses, research of data or questions posed by any of the members of groups listed above, which may be summarized in a technical memorandum, presentation, graphics

development, or other items as requested by Greeley staff. BC will not use these funds unless authorized by Greeley staff.

II. SCHEDULE

Consultant is authorized to proceed with the modified Scope of Services effective on the date of this Amendment. The modified Scope of Services shall be completed by extending the project end date to November 17, 2021. An updated schedule is provided as Attachment A – “Schedule”. Delivery of final concept report document on May 5, 2021.

III. COMPENSATION

Compensation for the services provided under Article I of this Amendment shall be calculated on the same basis as in the Agreement as modified by any previous amendment(s). The labor hours and cost estimates for completing the services defined in this Amendment are shown in Attachment B – “Compensation”.

A. Original Contract: \$1,234,729

B. Amendment 1: \$176,280

C. This Amendment (Amendment 2), from Attachment B, Compensation: \$395,737

This increases the total estimated compensation under the Agreement to \$1,806,746.

III. ATTACHMENTS

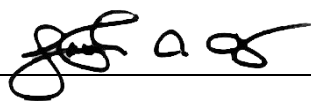
A – Schedule

B – Compensation

All other terms and conditions of the Agreement and any amendments thereto remain unchanged.

BROWN AND CALDWELL

CITY OF GREELEY

Signature:  _____

Signature: _____

Printed Name: Joe Casias _____

Printed Name: _____

Title: Managing Area Director _____

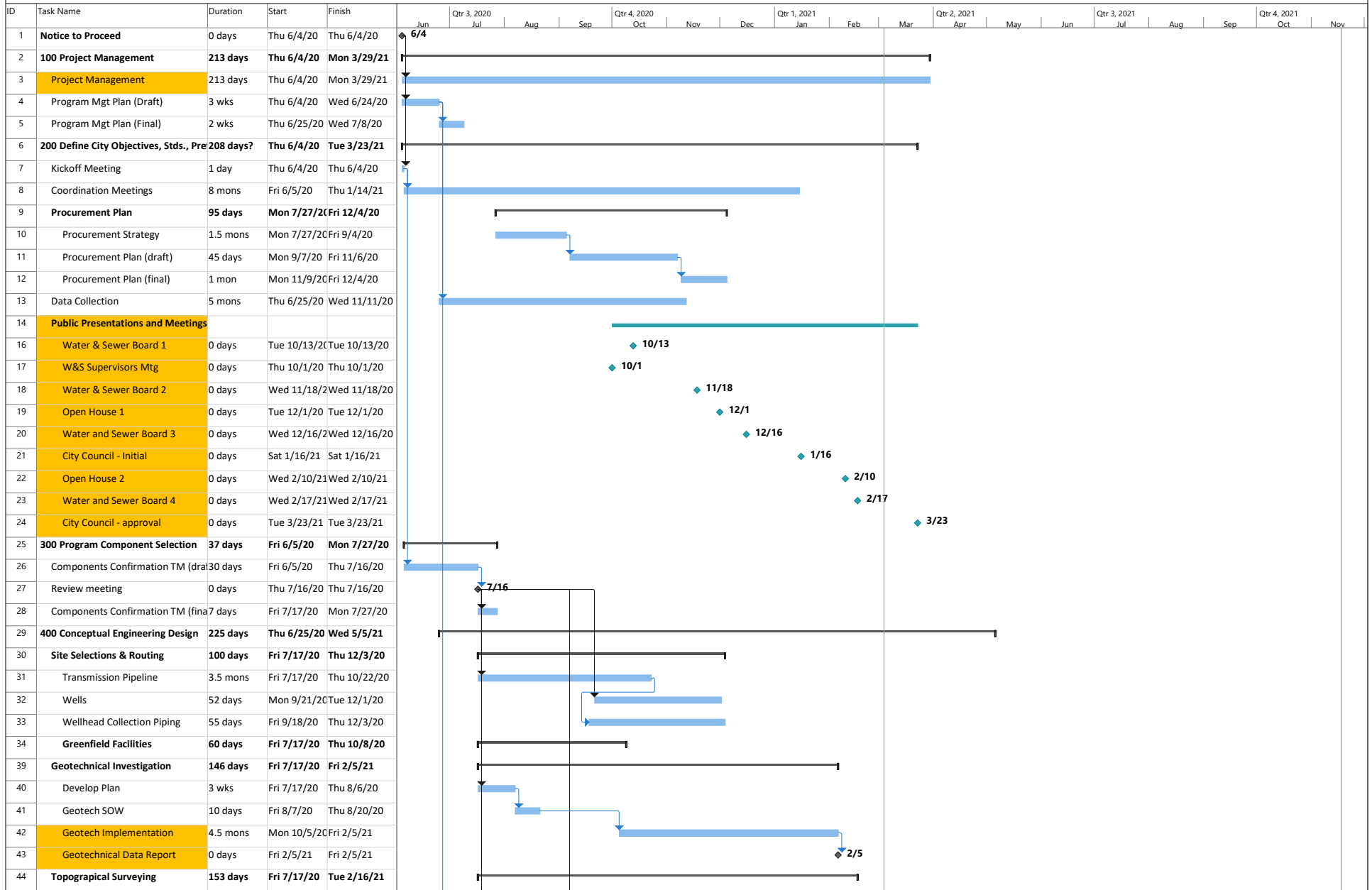
Title: _____

ATT Item No. 17. - SCHEDULE

PROGRAM SCHEDULE

City of Greeley

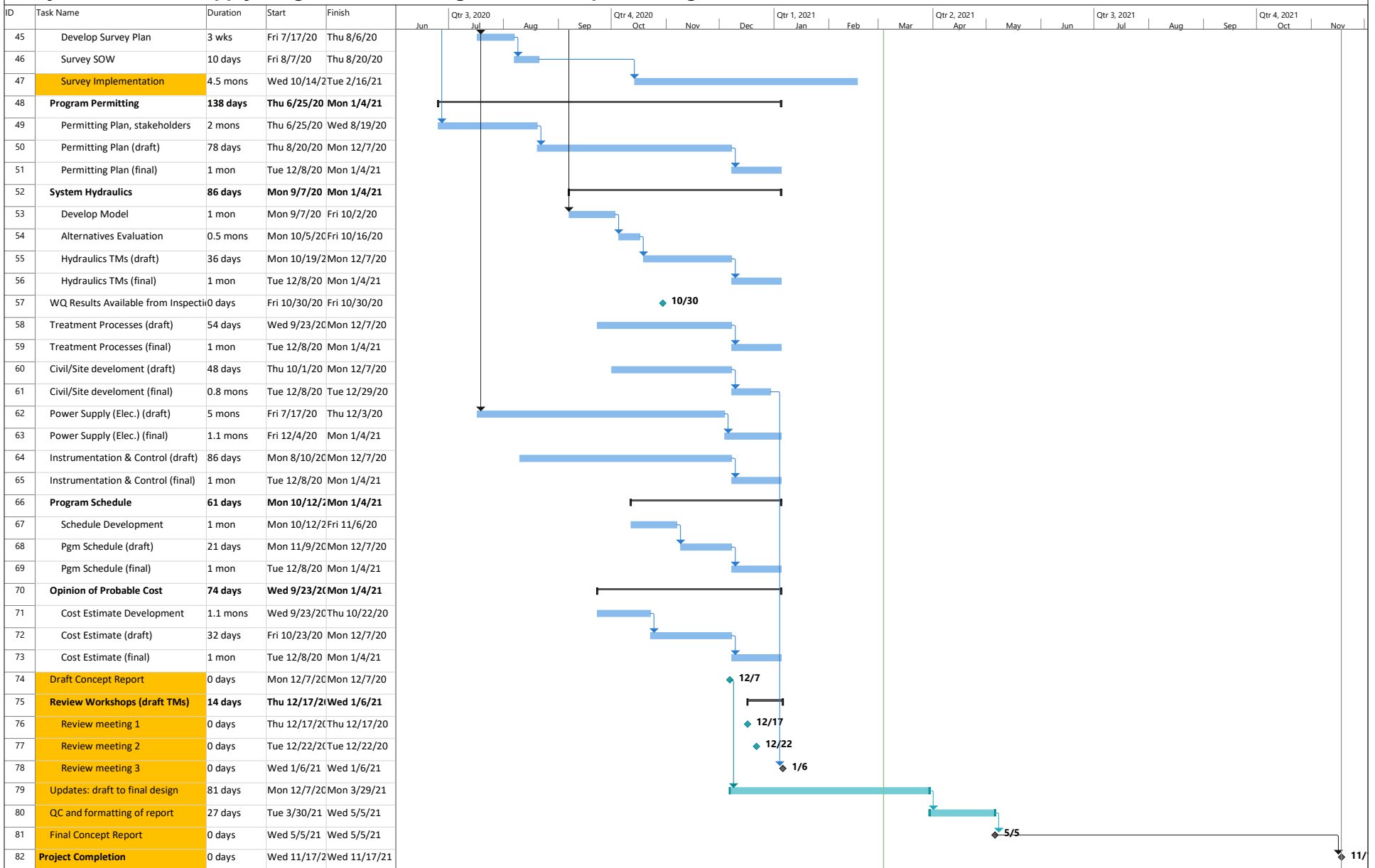
Terry Ranch Water Supply Program Owner's Engineer - Conceptual Design

Project: 03_Schedule_ConceptR
Date: Thu 3/4/21

PROGRAM SCHEDULE

City of Greeley

Terry Ranch Water Supply Program Owner's Engineer - Conceptual Design

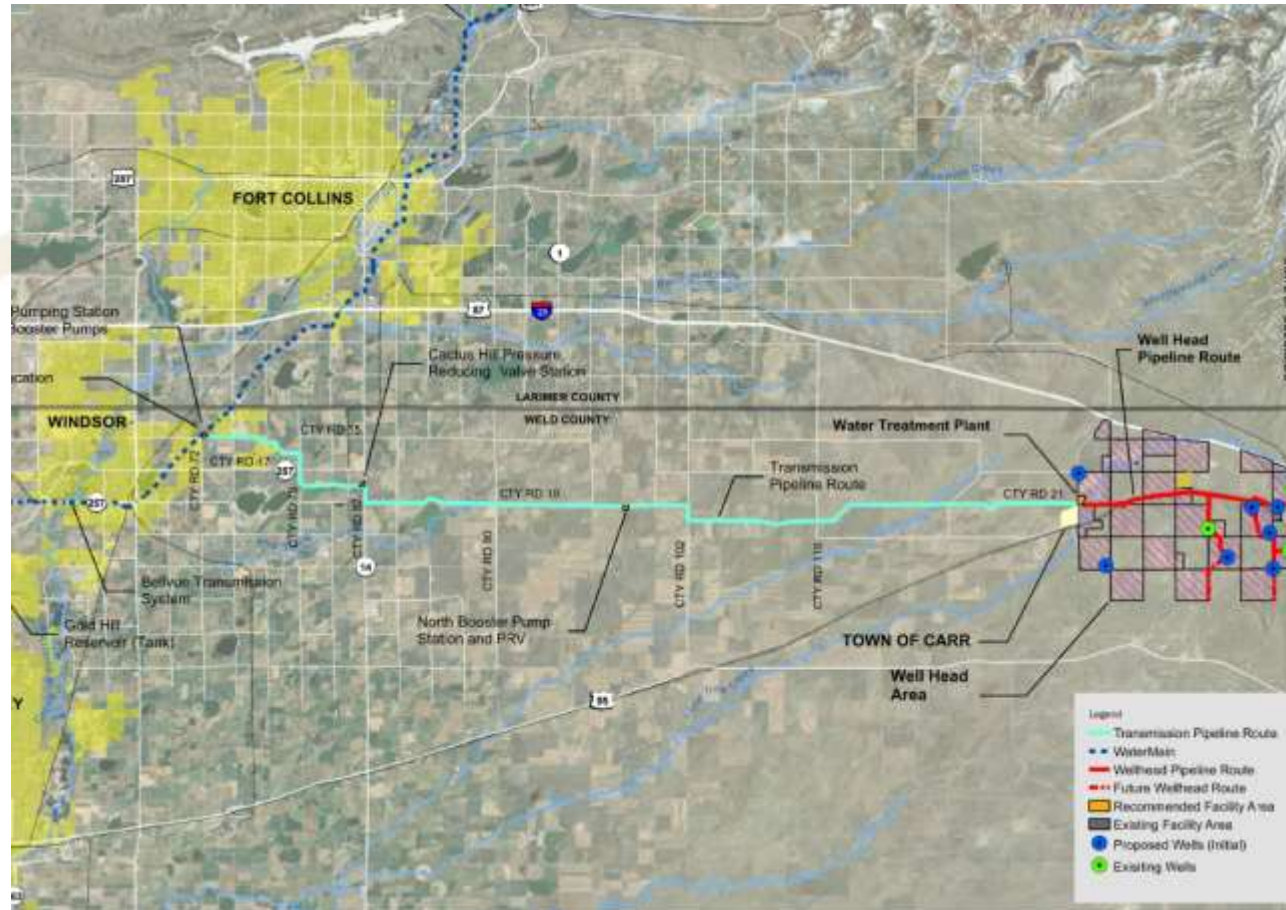
Project: 03_Schedule_ConceptR
Date: Thu 3/4/21

ATTACHMENT B - COMPENSATION

Greeley, City of -- TR36 Pipeline Concept Design. WO8 - Amendment No. 2																													
		Higbee, Scott P	Rose, Lisa J	Kepley, Samantha A	Long, Richard E	Melton, Erin L	Turner, Scott A	Shroyer, David W	Hicks, Kaitlyn M	Bergland, Nathan W	Billing, Brandon M	Helbel, Stephen R	Rossillon, Tina	Knight, Tyler	Stansbury, Brenda R	DMiceli, Anthony L	Sullivan, Lauren	Schuhen, Peter	Agster, William P	Garrett, Christopher S				CTL/Thompson	Manhard	Poudre Valley			
Phase	Phase Description	PM	PA																		Total Labor Hours	Total Labor Effort	Cost	Cost	Cost	Total Expense Cost	Total Expense Effort	Total Effort	
100	Project Management	\$208	\$98	\$139	\$233	\$139	\$179	\$179	\$118	\$179	\$179	\$190	\$179	\$158	\$179	\$179	\$208	\$139	\$190	\$233	330	\$66,390	\$0	\$0	\$0	\$0	\$0	\$0	\$66,390
101	Project Management	150	50	0	130	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	330	\$66,390	\$0	\$0	\$0	\$0	\$0	\$0	\$66,390
102	Progress Report	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
103	Accounting and Invoicing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
104	Project Work Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
105	Health and Safety Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
106	Risk Register	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
107	Project Archiving	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
108	QAQC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
109	Document Management System	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
200	Define City Objectives/Stdts/Prefs	45	0	24	10	0	15	0	0	0	0	0	0	0	0	0	0	0	0	0	94	\$17,711	\$0	\$0	\$0	\$0	\$0	\$0	\$17,711
210	Kickoff and Coordination Meetings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
230	Procurement Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
240	Data Collection	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
250	Water and Sewer Board Updates	45	0	24	10	0	15	0	0	0	0	0	0	0	0	0	0	0	0	0	94	\$17,711	\$0	\$0	\$0	\$0	\$0	\$0	\$17,711
300	Program Selection	0	0	0	20	40	0	0	0	15	0	0	0	0	0	0	0	0	0	0	75	\$12,905	\$0	\$0	\$0	\$0	\$0	\$0	\$12,905
330	Technical Memorandum	0	0	0	20	40	0	0	0	15	0	0	0	0	0	0	0	0	0	0	75	\$12,905	\$0	\$0	\$0	\$0	\$0	\$0	\$12,905
410	400-Prgm Def/Concept Engr Design	53	0	0	60	0	65	25	70	185	71	85	270	16	34	35	104	270	6	74	1,423	\$252,101	\$6,300	\$4,500	\$0	\$10,800	\$11,880	\$263,981	
410	Do Not Use	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
411	Transmission Pipeline	20	0	0	4	0	0	0	0	25	20	0	175	0	0	20	0	175	0	12	451	\$75,173	\$0	\$0	\$0	\$0	\$0	\$0	\$75,173
412	Wellhead Collection Piping	0	0	0	10	0	0	0	70	0	15	0	0	0	0	0	0	0	0	7	102	\$14,906	\$0	\$0	\$0	\$0	\$0	\$0	\$14,906
413	Greenfield Facilities	0	0	0	8	0	0	0	0	0	0	0	40	0	0	0	19	35	0	1	103	\$18,074	\$0	\$0	\$0	\$0	\$0	\$0	\$18,074
420	Geotechnical Investigation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$6,300	\$0	\$0	\$6,300	\$6,930	\$6,930	
430	Topographical Surveying Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$4,500	\$0	\$4,500	\$4,950	\$4,950	
440	Program Permitting	3	0	0	0	0	0	0	0	0	0	0	0	0	30	0	0	0	0	2	35	\$6,460	\$0	\$0	\$0	\$0	\$0	\$0	\$6,460
450	System Hydraulics	10	0	0	8	0	0	0	0	65	36	0	0	0	0	0	0	0	0	15	134	\$25,518	\$0	\$0	\$0	\$0	\$0	\$0	\$25,518
460	Treatment Processes	10	0	0	12	0	0	0	0	85	0	0	0	16	4	15	85	0	0	15	242	\$47,195	\$0	\$0	\$0	\$0	\$0	\$0	\$47,195
470	Utility Needs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
471	Civil Site Development	0	0	0	8	0	0	0	0	0	0	0	55	0	0	0	0	60	0	8	131	\$21,913	\$0	\$0	\$0	\$0	\$0	\$0	\$21,913
472	Power Supply (Electrical)	0	0	0	0	0	0	0	0	10	0	45	0	0	0	0	0	0	0	8	63	\$12,204	\$0	\$0	\$0	\$0	\$0	\$0	\$12,204
473	Instrumentation & Control	0	0	0	0	0	0	0	0	0	0	40	0	0	0	0	0	0	0	6	46	\$8,998	\$0	\$0	\$0	\$0	\$0	\$0	\$8,998
480	Program Schedule	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
490	Opinion of Probable Cost	10	0	0	10	0	65	25	0	0	0	0	0	0	0	0	0	0	6	0	116	\$21,660	\$0	\$0	\$0	\$0	\$0	\$0	\$21,660
500	Wrap-up Tasks	14	0	13	13	0	0	0	0	0	0	0	0	0	13	0	0	0	0	0	53	\$10,000	\$0	\$0	\$22,500	\$22,500	\$24,750	\$34,750	
510	PVREA Long-Term Study	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$22,500	\$22,500	\$24,750	\$24,750	
520	On-Call Support	14	0	13	13	0	0	0	0	0	0	0	0	0	13	0	0	0	0	0	53	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$10,000
GRAND TOTAL		262	50	37	233	40	80	25	70	200	71	85	270	16	47	35	104	270	6	74	1,975	\$359,107	\$6,300	\$4,500	\$22,500	\$33,300	\$36,630	\$395,737	

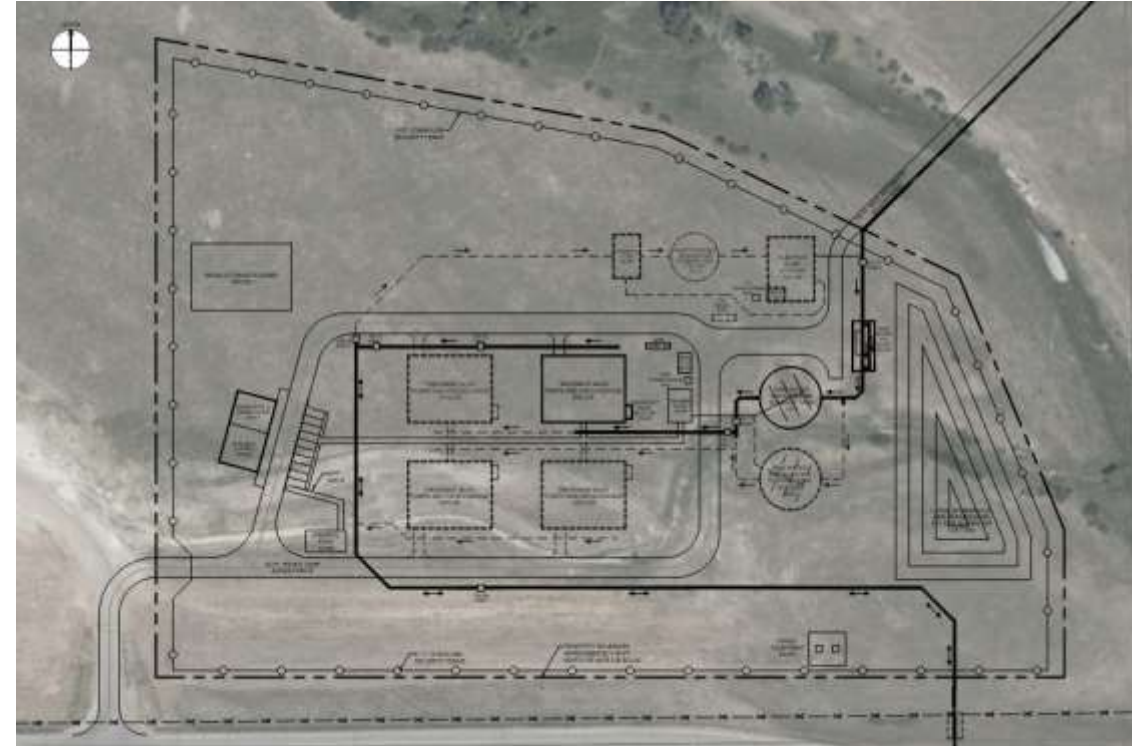
Terry Ranch Concept Design: Change Order Approval Request

June 15, 2021



Terry Ranch Concept Design

- **Scope**
 - Pipeline Route and Facility Site Selection
 - Geotechnical Investigation
 - Utility Locates
 - System Hydraulics Analysis
 - Treatment Process
 - Electrical Needs
- **Purpose**
 - Determine feasibility and cost of project
 - Provide initial design for future construction



Terry Ranch Concept Design

Change Order

- Water and Sewer requests approval of a change order for the additional work completed on the Terry Ranch Project Concept Design.
- Brown and Caldwell
- \$395,737 (46% increase from original contract amount of \$1,411,009)



Terry Ranch Concept Design

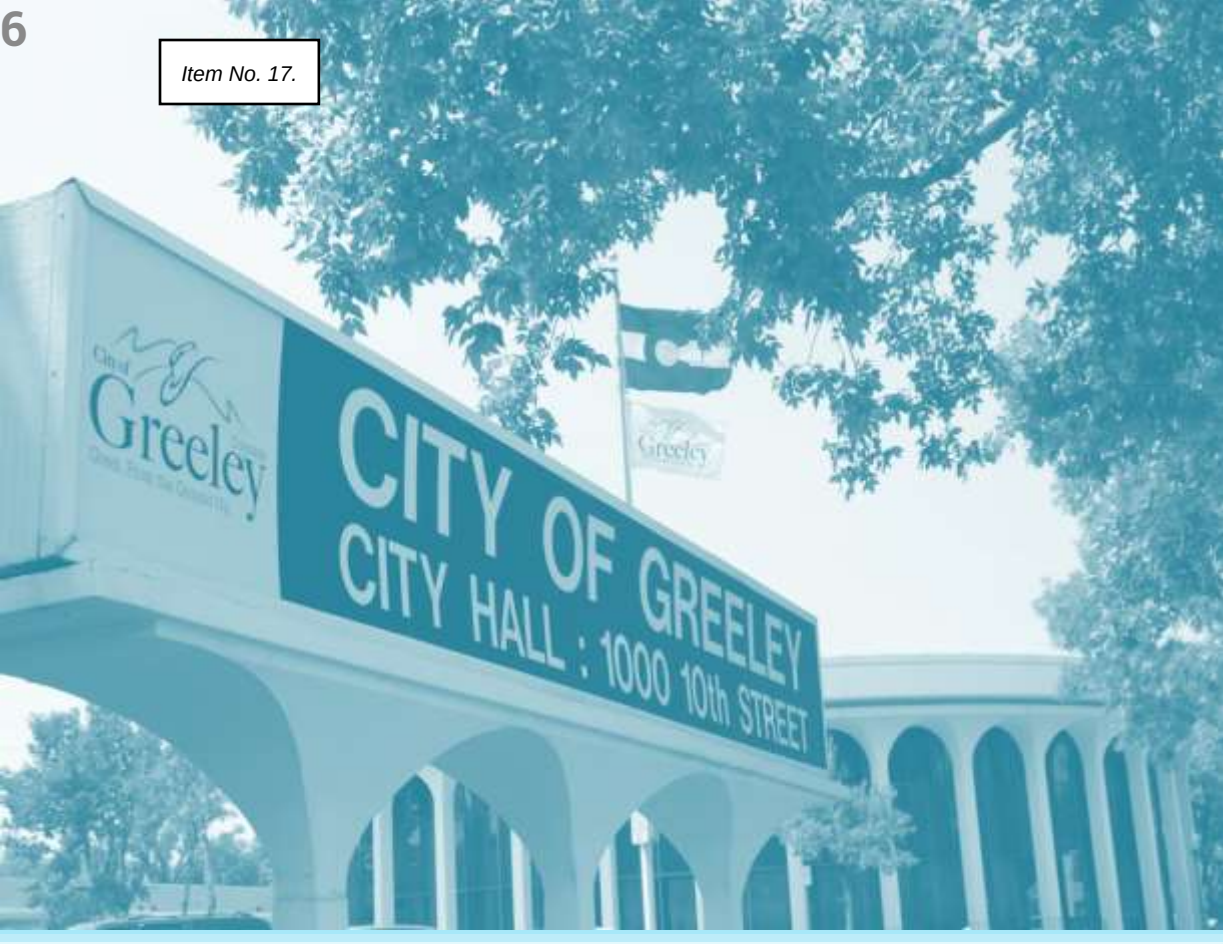
- **Additional Work Completed for the Change Order**
 - Enhanced Pipeline and Facility Design
 - Additional Design of Pump/Valve Sites
 - Unforeseen need for additional Geotechnical and Topographical surveys
 - Revised Hydraulic Analysis
 - Payments to PVREA for Power Analysis
 - Additional Treatment Process Design
 - Pilot Treatment Plant Tests



Conclusions and Staff Recommendations:

- The additional work for the project ensured that all comments and concerns were addressed during the concept design allowing Water & Sewer Board and City Council to make an informed decision whether to close on the purchase of the Terry Ranch Project.
- The Water and Sewer Department is requesting that City Council approve the change order to finalize the concept phase of the project.





QUESTIONS?



Council Agenda Summary

June 1, 2021

Title

Pulled Consent Agenda Items

Summary

Pulled Consent Agenda Items will be considered in the order they appeared on the Consent Agenda.

Council Agenda Summary

Key Staff Contact:

John Karner, Finance Director

Paul J. Fetherston, Deputy City Manager for Enterprise Resources

Title:

Public hearing and final reading of an ordinance appropriating additional sums to defray the expenses and liabilities of the City of Greeley for the balance of the fiscal year of 2021 and for funds held in reserve for encumbrances at December 31, 2020

Summary:

This is the second supplemental appropriation ordinance modifying the 2021 budget. This appropriation ensures that existing commitments in progress at 2020 year end can be completed in 2021, designates funds for additional commitments, and appropriates new grants that have been awarded.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes																
If yes, what is the initial, or, onetime impact?	\$ 94,670,525																
What is the annual impact?	\$ 94,670,525																
What fund of the City will provide Funding?	See Ordinance																
What is the source of revenue within the fund?	Bond Proceeds, Grants, Pass-Through, Fund Balance, Private Contributions, Expense Reimbursement, & Operating Transfers.																
Is there grant funding for this item?	Yes, Items 2, 5, 6, 8, & 13																
If yes, does this grant require a match?	Yes, Items 2, 5, & 13																
Is this grant onetime or ongoing?	Onetime																
Additional Comments:	Total appropriations made by this ordinance are \$94,670,525. The following funding sources will be used to cover the appropriations made by this ordinance. <table> <tr> <th>Source</th><th>Total</th></tr> <tr> <td>Bond Proceeds</td><td>\$ 71,050,000</td></tr> <tr> <td>Grants / Pass-Through</td><td>11,350,957</td></tr> <tr> <td>Fund Balance</td><td>6,717,255</td></tr> <tr> <td>Other Private Contributions</td><td>5,120,000</td></tr> <tr> <td>Expense Reimbursement</td><td>381,313</td></tr> <tr> <td>Operating Transfers</td><td>51,000</td></tr> <tr> <td>Grand Total:</td><td>\$ 94,670,525</td></tr> </table>	Source	Total	Bond Proceeds	\$ 71,050,000	Grants / Pass-Through	11,350,957	Fund Balance	6,717,255	Other Private Contributions	5,120,000	Expense Reimbursement	381,313	Operating Transfers	51,000	Grand Total:	\$ 94,670,525
Source	Total																
Bond Proceeds	\$ 71,050,000																
Grants / Pass-Through	11,350,957																
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Other Private Contributions	5,120,000																
Expense Reimbursement	381,313																
Operating Transfers	51,000																
Grand Total:	\$ 94,670,525																

Legal Issues:

City Charter prohibits actual expenditures from exceeding appropriations at the fund level. This ordinance will ensure that this does not occur.

Other Issues and Considerations:

Oracle Update and Strategy Moving Forward

The supplemental appropriation includes a funding request from the Oracle implementation team that includes the City Manager's Office, Human Resources, Information Technology and Finance Departments in the amount of \$250,000 for professional services support for the Oracle project. As outlined below, the funding required for Phases I and II of the Oracle action plan is including within this supplemental appropriation request. Upon completion of these phases, the City will have additional clarity on the scope of Phases III and IV and will come back to City Council to report on the scope of that work along with the necessary funding requirements.

Background

Over the past two years, the City undertook an analysis of its existing core enterprise resource systems. An external team of experts recommended consolidating multiple antiquated City systems under a single modern enterprise wide platform that would allow the City to gain operational efficiencies, reduce cost, improve internal controls, and ultimately provide better customer service. The City accepted the recommendation and selected Oracle as its software vendor through a competitive bid process. The project kicked off in June 2019 and the Oracle system went live on January 1, 2021.

The Oracle ERP implementation has had challenges, many of which are common to any new Enterprise Resource Planning (ERP) implementation effort (users getting comfortable with the new system, small system bugs during the early months of the project, etc.). There were also external factors such as performance concerns with the implementation consultant, changes in leadership from the original City team, and a pause in the project due to COVID that added to these early struggles. These challenges have lead City staff to deliberate on the appropriate action required to get the system operating at the level that was intended and realize the full benefits of being on a single modern system.

Action Plan

The challenges facing the City with Oracle are resolvable with the assistance of new external partners who can help get the system to operating at full capacity. The following action plan that breaks into four different phases is intended to get the system fully operational:

Phase	Title	Description	Estimate
I	System Stabilization	This Phase, which will focus on ensuring the data in Oracle is accurate and that the core functions are operating as required, is intended to stabilize the core areas of the system.	\$100,000-\$150,000

		It also includes the completion of a payroll and benefits audit to ensure the integrity of the payroll processing, and would combine consulting support between Phases I and II as needed.	
II	Review and Learn	This Phase, which will review the steps that were taken with the Oracle project – from planning, design, testing, and ultimately go live – to better understand where there were missteps and what changes and/or adjustments the City should make for future system IT projects, is intended to enable the City to learn from this experience as preparations for other modernization efforts required across the City. It also includes the completion of an after action review of the ERP implementation and will combine consulting support between Phases I and II as needed.	\$75,000-\$100,000
III	Gap Analysis	This Phase will focus on a full analysis of where those misalignments or “gaps” exist, gathering input from the enterprise resource team and end users across all City departments, and developing an execution plan for enhancing the Oracle system to ensure full alignment with existing City processes.	TBD: To be informed after Phases 1 & 2 are complete
IV	Oracle 2.0	This Phase will focus on making enhancements to the system to ensure full alignment with City processes. A robust training component will also be included to ensure city employees are informed of any system changes and comfortable with using the new system enhancements.	TBD: To be informed after Phases 1 & 2 are complete

Applicable Council Priority and Goal:

Image: Reinforce Greeley's vision as an attractive and vibrant community in which to live, learn, work and play.

Decision Options:

- 1) Adopt the ordinance as presented; or

- 2) Amend the ordinance and adopt as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to adopt the ordinance and publish with reference to title only.

Attachments:

Ordinance
Detail Supporting Schedule
PowerPoint Presentation

CITY OF GREELEY
ORDINANCE NO. _____, 2021

AN ORDINANCE APPROPRIATING ADDITIONAL SUMS TO DEFRAY THE EXPENSES AND LIABILITIES OF THE CITY OF GREELEY FOR THE BALANCE OF THE FISCAL YEAR OF 2021 AND FOR FUNDS HELD IN RESERVE FOR ENCUMBRANCES AT DECEMBER 31, 2020

WHEREAS, the City of Greeley has or will incur expenses for certain activities described below during the 2021 fiscal year; and

WHEREAS, the revenues received in the City of Greeley in 2020, exceeded the amount of revenues estimated in the 2020 Budget by more than the total amount of the expenditures in the same year.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. In accordance with section 5-17 of the Greeley Charter, from actual and anticipated revenues which exceed the revenue estimates in the 2021 budget and amounts held in fund balance reserves from 2020, there is hereby appropriated the following designated sums to be allocated for use during the remainder of 2021:

Fund	Total
100 General	\$ 483,980
122 Cable Franchise PEG Funds	13,805
125 Poudre River Trail	45,000
301 Public Improvement	381,313
303 Public Art	6,000
304 Food Tax	261,977
318 Quality of Life	870,482
334 Transportation Development	53,768
421 Water	11,979,200
422 Water Construction	67,775,000
424 Water Rights Acquisition	12,800,000
Grand Total	\$ 94,670,525

Section 2. All actions heretofore taken, not inconsistent with the provisions of this ordinance, by the officers, agents and employees of the City in connection with this appropriation are hereby ratified, approved and confirmed.

Section 3. This Ordinance shall become effective five (5) days after its final publication as is provided by Section 3-16 of the Greeley Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF _____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

City of Greeley
2021 Appropriation No. 2
City Council Meetings: June 1st & June 15th

Fund	Funding Source	Description	Fund Balance	Revenue	Expenditures	Net Impact
100 - GENERAL FUND						
1	Fund Balance	Funding contract staffing support for planning services and engineering development review (EDR) services within the Community Development Department for the remainder of 2021 to address a surge in permit review applications and support CD's commitment to adhering to the Department's established response time performance standards.	75,000	-	75,000	-
2	Operating Transfer: POUDRE RIVER TRAIL	In alignment with the 2016 Parks, Trails, and Open Lands Master Plan; the 2018 City Comprehensive Plan, and the 2021 Get Outdoors Greeley Strategic Plan, all of them highlight the Poudre River corridor and the adjacent trail corridor as a priority conservation area. Funding is being requested, as identified by The Poudre River Trail Corridor, Inc. Board of Directors (PRTCB), to update the master plan for the construction of a recreational trail from Island Grove to the South Platte River that was originally contemplated in 2009. This update would address difficulties in property ownership and trail routing along with identifying proper land uses. Additionally, this request will utilize a consultant to update the Poudre Trail marketing plan to better communicate with the community and to assist in building partnerships.	-	45,000	45,000	-
3	State Pass Through	Matching funds are requested for the Emergency Management Performance Grant (EMPG) to support the establishment of a new Facility-Employee Alert System provided through the HipLink Notification Solution. This will provide an emergency notification system for all City of Greeley staff during dangerous situations, natural disasters, or times where immediate communication is required. In March of 2021, the Colorado Department of Homeland Security and Emergency Management (DHSEM) awarded the City of Greeley with Emergency Management Performance Grant (EMPG) Small Dollar Grant Agreement (SDGA) 19EM-20-96, which provides half of the funding necessary to purchase the HipLink Notification Solution for the City's new Facility-Employee Alert System. The HipLink system will allow City employee notification, and the Greeley OEM, Police Department, and Fire Department to access the Federal Emergency Management Agency (FEMA)'s Integrated Public Alert & Warning System (IPAWS) with direct messaging to the community for public warning and notifications.	-	13,980	13,980	-
4	Fund Balance	Funding to support professional services work that includes a City-wide payroll audit, ERP after-action report, SME training development, and program management services as part of the first two of four phases of the City's Oracle Stabilization Action Plan. This funding request also will support short-term project management support including compliance and reporting services related to the American Rescue Plan Act funding.	350,000	-	350,000	-
100 - GENERAL FUND			425,000	58,980	483,980	-
122 - CABLE FRANCHISE PEG FUNDS						
5	Fund Balance	Funding from Cable Franchise Public, Educational, and Governmental (PEG) Fees are being requested for the creation of a hybrid model for City Council Meetings. Currently, due to COVID restrictions and safety, City Council meetings are only presented virtually on the City's YouTube channel via Zoom. No meetings are held in Council's Chambers. As COVID numbers decrease and the number of residents who have been vaccinated for COVID increases, City Council wishes to move to a hybrid setup. This would allow for in-Chambers and virtual participation at Council meetings at the same time. This request funds the equipment that will allow participants watching Council meetings (in-Chambers and virtually) to hear and communicate with each other. The meeting would continue to be streamed live via YouTube and on the City's government access channel (GTV8).	13,805	-	13,805	-
122 - CABLE FRANCHISE PEG FUNDS			13,805	-	13,805	-
301 - PUBLIC IMPROVEMENT						
6	Expense Reimbursement	This request appropriates the settlement payment for the 10th St design into the Quiet Zone project to further fund improvements and road safety to the project, improving the qualifications of a quiet zone. This capital project is underway and will help with the safety of road crossing and eliminate noise to property owners, improving their quality of life. This request will fund additional crossing gates to improve the Quiet Zone calculation score to aid in the likelihood of the Federal Railroad Administration's approval of the quiet zone. The location of the gates has not been finalized until further negotiations with property owners have occurred. Funding is from a settlement agreement with Jacobs Engineering Group which identified flaws in the surveying, engineering, and design work performed by Jacobs Engineering.	-	381,313	381,313	-
301 - PUBLIC IMPROVEMENT			-	381,313	381,313	-

Fund	Fund	Item No. 19.	tion	Fund Balance	Revenue	Expenditures	Net Impact
304 - FOOD TAX							
7	State Pass Through	Matching funds in correlation with the Colorado Parks & Wildlife State Trails Program Non-Motorized Land & Water Conservation Fund Trail Grant are being requested to support the existing Trail Maintenance budget. Approximately 200 linear feet of bank needs restored on the Cache la Poudre River and reconstruction needs exist on the adjacent Poudre River Trail that has been undercut by high water. The 2016 Parks, Trails, and Open Lands Master Plan and the 2021 Get Outdoors Greeley Strategic Plan both identify the Poudre River corridor and the Poudre River trail corridor as a priority conservation area and a critical recreational trail corridor. This project entails bank restoration and trail repairs to maintain the continuity of the Poudre River Trail to assure the Poudre River Trail remains a viable community asset.		-	261,977	261,977	-
304 - FOOD TAX				-	261,977	261,977	-
318 - QUALITY OF LIFE							
8	Grant	Grant funds are being appropriated from Great Outdoors Colorado (GOCO) to enhance construction at Balsam Park and extending efforts to promote healthy lifestyle choices and the use of Greeley's outdoor spaces by the neighborhoods in East Greeley. This project will improve public parks by providing access to nature and recreational opportunities within a ten-minute walk of any residence in alignment with the Parks, Trails and Open Lands Master Plan established for east Greeley. Grant funding will be utilized to create a large play area in the center of the Balsam Sports Park, along with interconnected pathways, shade structures, trees for shade, benches for seating, and a looped pathway connection allowing pedestrian access around the entire perimeter of the site.		-	350,000	350,000	-
9	Fund Balance	Funding is being requested for landscape Improvements in front of Centennial Library as a part of a larger park and street improvement project at Centennial Park as part of the landscaping requirements for right-of-way which will also enhance the aesthetics of the area. This site was specifically identified for improvement in the 2016 Parks, Trails, and Open Lands Master Plan. This is a minor portion of the overall site improvements to Centennial Park and 23rd Avenue. A contribution from the High Plains Library District will cover fifty percent of landscape improvements directly in front of Centennial Library from impacts of a realignment of the sidewalk in the area. High Plains Library District has been billed and has paid the amount in full.		14,482	-	14,482	-
10	Grant	This request is for the appropriation of a Resilient Communities grant award from Great Outdoors Colorado to be used towards the construction of improvements at the east Greeley natural area, a project led out of the Parks division. The east Greeley natural area project will provide new recreational opportunities for the community's residents through the construction of a pedestrian bridge, new site furnishings, nature play structures, boulders, and slab sandstone, plus three weeks of Weld County Youth Conservation Corps labor. The 2016 Parks, Trails, and Open Lands Master Plan and the 2021 Get Outdoors Greeley Strategic Plan all show the area where the subject property lies as a priority conservation area, therefore a high priority for land acquisition and conservation in the community.		-	300,000	300,000	-
11	Fund Balance / Operating Transfer: PUBLIC ART	Funding is requested to support the Sheep Draw Trail at 83rd Avenue project originally initiated in 2018. This project will complete the last gap in the Sheep Draw Trail and will establish the trail from the Poudre River to 90th Avenue. Floodplain issues requiring additional permits and the purchasing of wetland credits held up the construction of the trail. Fund balance is available due to savings from the completion of 71st Avenue projects in 2020. This project is the last part of the overall Sheep Draw Trail plan. Funding for the entire Sheep Draw Trail was estimated at the start of the plan, and the split between phases requires a readjustment for this project to proceed. This project was part of the original commitment for Quality of Life 0.30% tax approved by voters.		206,000	-	206,000	-
318 - QUALITY OF LIFE				220,482	650,000	870,482	-
334 - ROAD DEVELOPMENT							
12	Fund Balance	The acquisition of ROW from Xcel has been in process for over a year due to their internal requirements. The advance payment was made to Xcel for transmission line work at 20th Street and 83rd Avenue. A reimbursement was received from Xcel as their cost was less than their estimated funds required for final construction. There is ongoing work with an HOA that may result in additional construction expenses.		53,768	-	53,768	-
334 - ROAD DEVELOPMENT				53,768	-	53,768	-

Fund	Fund	Item No. 19.	ation	Fund Balance	Revenue	Expenditures	Net Impact
421 - WATER OPERATIONS							
13	Fund Balance	Funding is being requested for the emergency purchase of sodium permanganate chemicals and a feed system for the treatment of Ash Laden water. In 2020, the watershed that serves the City of Greeley experienced the largest wildfire in history. This fire is going to release metals and nutrients into the raw water that is treated at the Bellvue filter plant. Sodium permanganate is an oxidizer that can help oxidize metals and organics in the water that can be treated more efficiently through the conventional treatment process. This expenditure will cover chemicals, a chemical feed system, and integration into Supervisory Control & Data Acquisition (SCADA). This is only an emergency system and not a permanent treatment tool.		68,000	-	68,000	-
14	Fund Balance	Additional funding is requested for the disposal of tier 2 solid waste from the Bellvue water treatment plant. Residuals, or "sludge", is the by-product of all the organics, metals, and chemicals that are added during the treatment of drinking water and subsequently removed during the treatment process. Sludge is classified by the State as tier 1, 2, or 3. The higher the number, the more toxic/hazardous elements are contained in the sludge. Historically, the Bellvue water treatment plant has produced Tier 1 residuals, but that changed this year with 2021 sludge being classified Tier 2. One of the larger operational costs for the treatment plants is the removal of this residual material which must be hauled to a landfill. Each landfill has a permit with limits that dictate what level of waste they can accept. Bellvue is required to have sludge hauled to a Tier 2 facility which will cost more than budgeted given the original Tier 1 assumption. The risk of putting off hauling until next year when an additional budget can be added would be increased cost along with a risk of exceeding Bellvue's storage capacity for solid waste. This is particularly risky given Bellvue will be treating wildfire water this summer which contains more solids than a typical year. This additional appropriation request covers the difference in cost between what was budgeted for sludge removal in 2021 vs. what the sludge hauling contractor has quoted the Bellvue plant for disposal this year.		61,200	-	61,200	-
15	Fund Balance / Grant	Funding is requested for the mitigation of damages from the Cameron Peak Fire. Water quality issues have impacted raw water treatment at the Bellvue & Boyd treatment plants, and sedimentation and erosion issues exist, which impact 5 of Greeley's reservoirs. The Cameron Peak Fire, which began August 13th, 2020, was unanticipated and was not fully contained until December of 2020. The fire burned over 208,000 acres of Greeley's Poudre River watershed where half of Greeley's water supplies are diverted. Watershed mitigation activities will include the installation of sediment basins at Chambers, Barnes, Comanche, Hourglass, and Peterson reservoirs, as well as wattles and log jam debris prevention structures on several slopes throughout the burn area to minimize erosion. Additionally, aerial mulching will be required on as many acres as possible to minimize erosion and sedimentation impacts. \$5 million was appropriated earlier this year in anticipation of additional federal funding (\$4 million) and cost matching by Fort Collins (\$500,000). Colorado Water Conservation Board (CWCB) anticipates a total grant of \$3 million with the match split evenly between Greeley, Fort Collins, and Coalition of the Poudre River Watershed (CPRW) (total \$6 million). Additionally, the U.S. Natural Resources Conservation Service Emergency Watershed Protection program (NRCS EWP) expects an additional \$5 million in federal funding, of which \$4.25 million will need a 20% cost match, to be shared by Greeley, Fort Collins and other partners (total \$5.85 million).		1,425,000	10,425,000	11,850,000	-
421 - WATER OPERATIONS				1,554,200	10,425,000	11,979,200	-
422 - WATER CONSTRUCTION							
16	Fund Balance	Funding is being requested for the installation of a water pipeline in advance of the Weld County roundabout project at 35th Avenue and O Street, an area identified in both Greeley's future water service area and Distribution Master Plan. W&S would like to install a new waterline at 35th Avenue this summer, extending from F Street beyond the limits of the Weld County roundabout project. This new line will allow Greeley to connect future service areas from 35th Avenue, and constructing it now allows for reduced costs since no road repairs will be required. Fortunately, the waterline design for this stretch is nearing completion and the requested budget reflects the associated construction cost estimate from the Construction Management-At-Risk (CMAR) contractor to do this work.		825,000	-	825,000	-

Fund	Fund	Item No. 19.	ation	Fund Balance	Revenue	Expenditures	Net Impact
17	Fund Balance / Private Contribution		Funding is being requested for Terry Ranch Water Development Design to support water supply and storage acquisition as identified as a major priority in Greeley's Water Master Plan. The design of the new Terry Ranch transmission pipeline runs from the well site in Carr south to the connection with the existing 60" Bellvue water transmission line. This will also include easement acquisition costs and construction service. The appropriation request is 100% design of the first 6 miles of pipeline from the 60" line north to the north side of HWY 14, and 60% design for the remaining 27 miles of pipeline. The design is estimated at \$4,200,000, with construction services of the first 6 miles estimated at \$1,500,000, and the initial construction manager at risk (CMAR) services estimated at \$300,000. The City is currently working on acquiring easements for the pipeline. The estimated cost for the easements is \$2,000,000 and some of that expense is already in the current budget. These project costs will be split with W&S paying for 20% and the seller paying 80%. The amount budgeted for 2021 will cover Greeley's portion of the expense and the requested appropriation amount will utilize funds provided by the seller at closing. This appropriation is a request for access to the seller-provided funds to provide the 80% match to the W&S budgeted 20% for design, and preconstruction services from the selected contractor and construction management firm.	1,280,000	5,120,000	6,400,000	-
18	Bond Proceeds		This request is to fund Greeley's contribution to the Chimney Hollow Reservoir construction. This is a long planned project that will provide water storage for Greeley's water customers for many generations. The construction of the Chimney Hollow Reservoir will increase the yield of Greeley's Windy Gap water supply. The Windy Gap Firming project is a long-needed project that will firm (make reliable) Greeley's Windy Gap water supply. The Windy Gap water source is a junior supply and can be moved from the West Slope to East Slope water customers only under ideal conditions, and because of that, the Windy Gap supply often cannot be used by Greeley. This firming project will build Chimney Hollow Reservoir near Carter Lake and allow the twelve firming participants the ability to store Windy Gap water on the East Slope when it is available. This will allow Windy Gap water to be used in years that it does not yield a new supply. This request is to appropriate the construction funding originally budgeted in 2022 into the current year. A subset of the Windy Gap Firming participants, including Greeley, have joined together to partner in a pooled financing for the construction costs associated with Chimney Hollow Reservoir.	-	60,550,000	60,550,000	-
422 - WATER CONSTRUCTION				2,105,000	65,670,000	67,775,000	-
424 - WATER RIGHTS ACQUISITION							
19	Fund Balance / Bond Proceeds		This request seeks to appropriate additional funds from the Water Acquisition Fund for a purchase of 5 and 1/16 shares of Water Supply and Storage Company (WSSC) water rights aligning with the core priority for additional water acquisition as identified in Greeley's 2003 Water Master Plan. This appropriation will allow Greeley to acquire nearly 350 acre-feet of potable supplies from the City's first priority water source, which furthers our policy attainment target of acquiring 10,000 acre-feet of water. If this additional appropriation is approved for 2021, Greeley would, at the minimum, save \$2.5 million in future WSSC water acquisition costs. Along with the purchase, Greeley negotiated a first right of refusal to purchase an additional 11 shares of WSSC at a future date, which provides the city significant advantages in building out its water portfolio. The purchase also includes the sale of two farms (without water rights) to the seller to reduce enterprise capital outlay. The majority of the budgeted 2021 water acquisition funds have been spent or allocated to purchase other water rights.	2,300,000	10,500,000	12,800,000	-
424 - WATER RIGHTS ACQUISITION				2,300,000	10,500,000	12,800,000	-
TOTAL (Less Additional Operating Expenditures Between Funds)				6,672,255	87,947,270	94,619,525	-
OPERATING TRANSFERS							
2	Fund Balance		Poudre River Trail - Eastward Extension Master Plan: Operating Transfer of Fund Balance Poudre River Trail to GENERAL FUND	45,000	-	45,000	-
11	Expense Reimbursement		Sheep Draw Trail at 83rd Avenue: Operating Transfer of Expense Reimbursement QUALITY OF LIFE to PUBLIC ART	-	6,000	6,000	-
TOTAL ADDITIONAL OPERATING EXPENDITURES BETWEEN FUNDS				45,000	6,000	51,000	-
GRAND TOTAL				6,717,255	87,953,270	94,670,525	-

2021 2nd Additional Appropriation

**City Council Meetings
June 1st & June 15th**



Second Appropriation - 2021

- Allocation of Fund Balances
- Ensures Completion of Projects & Commitments
- Records Grants & Received Revenues
- Total Appropriated Amount: \$94,670,525



Comprehensive Plan Categories

- **Economic Health & Diversification (ED)**
- **Education, Health, and Human Services (EH)**
- **Growth & City Form (GC)**
- **Historic & Cultural Resources (HC)**
- **Housing (HO)**
- **Infrastructure (IN)**
- **Natural Resources & Open Lands (NR)**
- **Parks & Recreation (PR)**
- **Public Safety (PS)**
- **Transportation & Mobility (TM)**



Comprehensive Plan Allocation

Infrastructure (IN)		93,170,293	
Natural Resources & Open Lands (NR)		651,977	
Parks & Recreation (PR)		576,482	
Public Safety (PS)		129,200	
Growth & City Form (GC)		75,000	
Transportation & Mobility (TM)		53,768	
Education, Health, and Human Services (EH)		13,805	

Comprehensive Plan Allocation

Operating

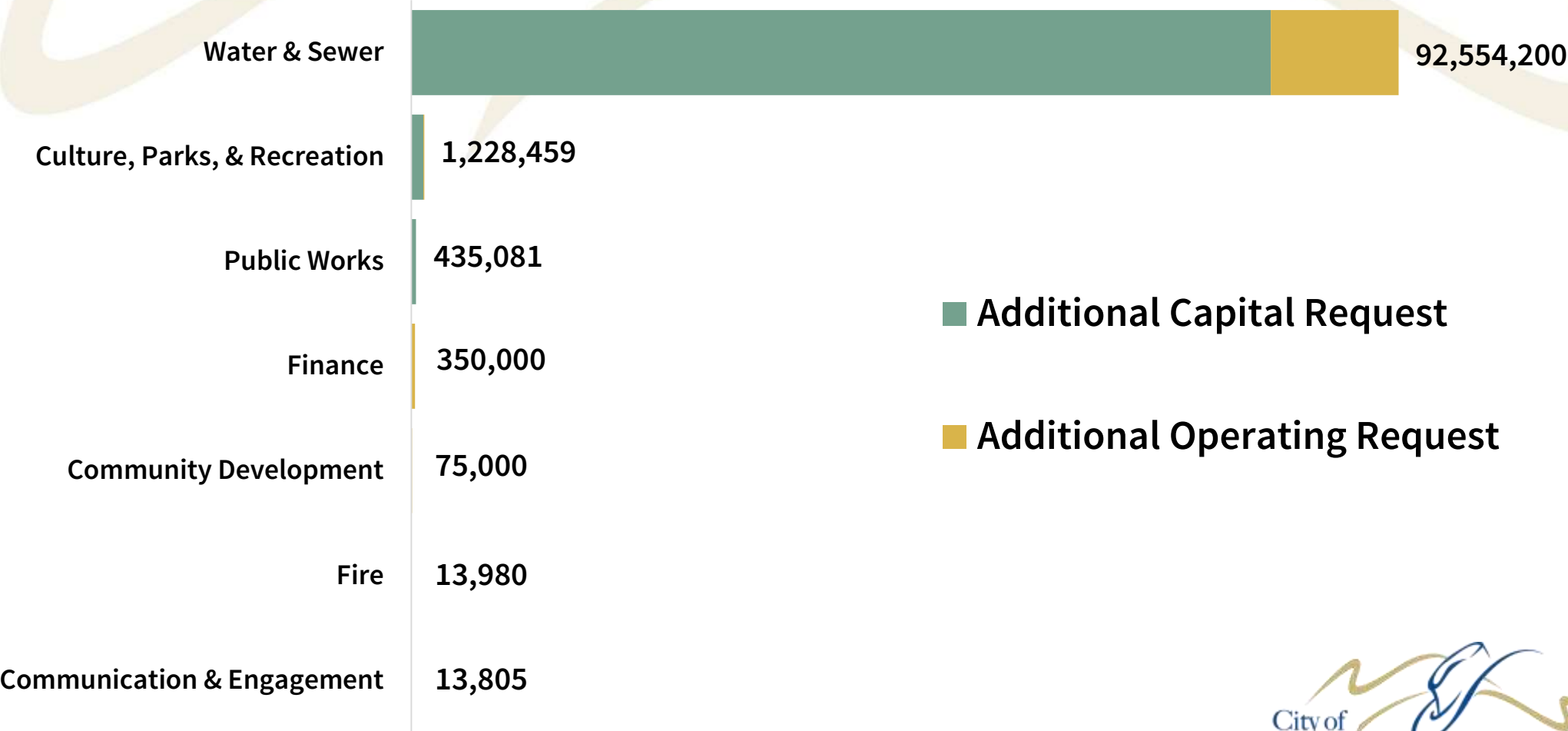
Infrastructure (IN)		12,213,980
Public Safety (PS)		129,200
Natural Resources & Open Lands (NR)		90,000
Growth & City Form (GC)		75,000
Education, Health, and Human Services (EH)		13,805

Capital

Infrastructure (IN)		80,956,313
Parks & Recreation (PR)		576,482
Natural Resources & Open Lands (NR)		561,977
Transportation & Mobility (TM)		53,768



Department Allocation



Summary

- Affirmation of Prior Commitments
- Maintain Transparency & Accounting Standards
- Demonstrates Transparency of Restricted Funds



Item No. 19.



Questions

Council Agenda Summary

Key Staff Contacts:

Raymond Lee
970-518-2262

Scott Magerfleisch
970-350-9305

Stacey Aurzada, Deputy City Attorney
970-350-9757

Title

Public hearing and final reading of an ordinance granting a Non-Exclusive Franchise to Allo Greeley, LLC for the Right to Make Reasonable Use of, and Erect, Construct, Operate, and Maintain through the Public Rights-of-Way, Easements, and Other Public Property and Equipment Necessary and Appurtenant to the Operation and Maintenance of a Cable System and the Provision of Cable Services to Citizens within the City

Summary

ALLO Communications ("ALLO") is a telecommunications company offering fiber telephone, long distance, broadband, internet and television to residents and businesses. ALLO currently provides communications services to cities across Nebraska. Allo also provides communication services and has a cable franchise in Fort Morgan, Colorado.

In 2020, ALLO reached out to Greeley staff members regarding their desire to begin providing service to the residents of Greeley. ALLO anticipates providing telephone, broadband internet and cable television services in Greeley. Greeley staff members have negotiated a Master Service Agreement and a Site License Agreement that will allow ALLO to install fiber in the Rights of Way located in Greeley. These documents will be executed by the City Manager. Since ALLO has expressed their desire and intent to provide cable television services in Greeley, a Cable Franchise Agreement is also necessary pursuant to Section 20-859 of the City of Greeley Charter.

A representative from ALLO, and Ken Fellman, the City of Greeley's cable franchise consultant, both will be available to answer questions at the public hearing and final reading.

Fiscal Impact

Does this item create a fiscal impact on the City of Greeley?	Yes, Franchise Fee & PEG Fee Revenues
If yes, what is the initial or onetime impact?	
What is the annual impact?	
What fund of the City will provide funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A

If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues

The City Charter provides that the grant of a franchise must be approved by adoption of an ordinance.

Consideration of this matter is a legislative process which includes the following public hearing steps:

- 1) City staff presentation (if requested)
- 2) Council questions of staff
- 3) Public input (hearing opened, testimony - up to three minutes per person, hearing closed)
- 4) Council discussion
- 5) Council decision

Other Issues and Considerations

Contemporaneously with the approval of the Cable Franchise by the City Council, Greeley staff will execute a Master License Agreement and Supplemental Site License with ALLO. These documents do not require Council approval.

Applicable Council Goal or Objective

Economic Health and Development: Engaged Business and Industry Relationships

Decision Options

- 1) Adopt the ordinance as presented; or
- 2) Amend the ordinance and adopt as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action

A motion to adopt the ordinance and publish with reference to title only.

Attachments

Ordinance
ALLO GREELEY, LLC Franchise Agreement

CITY OF GREELEY, COLORADO

ORDINANCE NO. _____, 2021

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO ALLO GREELEY, L.L.C. AND ITS SUCCESSORS AND ASSIGNS FOR THE RIGHT TO MAKE REASONABLE USE OF, AND ERECT, CONSTRUCT, OPERATE, AND MAINTAIN THROUGH THE PUBLIC RIGHTS-OF-WAY, EASEMENTS AND OTHER PUBLIC PROPERTY AND EQUIPMENT NECESSARY AND APPURTENANT TO THE OPERATION AND MAINTENANCE OF A CABLE SYSTEM AND THE PROVISION OF CABLE SERVICES TO CITIZENS WITHIN THE CITY

WHEREAS, Allo Communications L.L.C., ("Allo"), is seeking to provide cable services within the corporate boundaries of the city of Greeley ("City"); and

WHEREAS, Allo and the City have been involved in negotiations for several months related to the granting of a new cable franchise agreement to Allo; and

WHEREAS, these negotiations have resulted in a proposed Franchise Agreement that is being presented to the City Council for its consideration and approval (the "Franchise Agreement"), a copy of which is attached hereto; and

WHEREAS, the Franchise Agreement includes the following major terms and conditions: (1) a term of fifteen (15) years; (2) a requirement that Allo pay to the City a franchise fee of five percent (5%) of the gross revenues that Allo derives, directly or indirectly, from the operation of the cable system used to provide cable services within the City; and (3) a requirement that Allo continue to comply with the customer service standards as adopted and subsequently modified by the City, consistent with applicable law; and

WHEREAS, the City Council of the City of Greeley finds that the City's grant of a cable franchise to Allo, in accordance with the terms and conditions of the Franchise Agreement, is in the best interests of the citizens of the city of Greeley, will meet the future cable-related needs of the community, and is consistent with the pre-emptive requirements of §541 of the Cable Television Consumer Protection and Competition Act of 1992.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The City of Greeley hereby adopts the Cable Franchise Agreement labeled as Exhibit A and attached to this Ordinance.

Section 2. This Council Ordinance adoption is authorized under Article XVIII of the Greeley City Charter.

Section 3. This Ordinance authorizes the Mayor and appropriate City staff to execute the attached Cable Franchise Agreement.

Section 4. This Ordinance shall become effective five (5) days follows its final publication.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF
_____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

**ALLO GREELEY LLC AND
THE CITY OF GREELEY, COLORADO**

CABLE FRANCHISE AGREEMENT

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EXHIBIT A: Customer Standards

EXHIBIT B: Report Form

**ALLO GREELEY LLC AND
CITY OF GREELEY, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited or licensed educational institution, public or private, including, for example, pre-schools, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, order (including, without limitation, FCC orders), executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG HD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for

operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City” is the City of Greeley, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 “City Council” means the Greeley City Council, or its successor, the governing body of the City of Greeley, Colorado.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.19 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.21 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.22 “FCC” means the Federal Communications Commission.

1.23 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.24 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.25 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.26 “Franchise Fee” means that fee payable to the City described in subsection 3.1 (A).

1.27 “Grantee” means ALLO Greeley, LLC or its lawful successor, transferee or assignee.

1.28 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.28 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.29 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.30 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.31 “Manager” means the City Manager of the City or designee.

1.32 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.33 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.34 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.35 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.36 “State” means the State of Colorado.

1.37 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.38 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.39 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.40 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.41 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.42 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.43 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) ***Exhibit A***, entitled Customer Service Standards.
- 2) ***Exhibit B***, entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional, generally applicable, nondiscriminatory, lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of

Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. The City may, in its sole, reasonable discretion, determine that the Grantee should not be subjected to the provisions of this Section 2.2(B) where Grantee's failure to comply with Applicable Law arose from a good faith error that resulted in no or minimal negative impact on the Subscribers and/or the City.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on [REDACTED], 2021 (the "Effective Date"), and shall terminate on [REDACTED], 2031 unless terminated sooner as hereinafter provided. Notwithstanding anything to the contrary reference herein, the parties acknowledge their Master License Agreement dated [REDACTED], 2021, and agree that should that agreement terminate for any reason, this Franchise, and any renewal or extension hereof, shall also terminate at the same time.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter

enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization (including, without limitation, an amendment to any current franchise or lawful authorization) containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are required under the terms of this Section 2.6.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of Cable Services, so as to ensure

that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise unless (i) the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City; or (ii) the requirements of this Section relate to an amendment to any current cable franchise or lawful authorization to provide multi-channel video services by a wireline based provider.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

(1) Grantee may negotiate with the City to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was

granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, as assigned by the City, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.28, as part of the

Franchise Fee audit/review the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, “relevant data” shall include, at a minimum, Grantee’s records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the “other relevant data” shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to five thousand dollars (\$5,000) for each year of the audit period. The City’s right to audit/review and the Grantee’s obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City’s Rights-of-Way for Grantee’s use of the City’s Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee’s Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, Applicable Law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

(A) The PEG Capital Contribution pursuant to Section 9.6, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the City and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The City likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the City with advance written notice (an "Offset Notice"). The Offset Notice shall document the proposed offset or service charges so that the City can make an informed decision as to its course of action. Upon receipt of the Offset Notice City shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) The Offset Notice shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Section 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for City to make its election under Section 3.11(A); provided however, that any disagreements or disputes over

whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under Sections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in Section 3.11 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include those modifications.

(D) If the parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The City acknowledges that Grantee may provide one outlet of Basic Service and associated equipment to certain City owned and occupied or leased and occupied buildings, schools, fire stations and public libraries located in areas where Grantee provides Cable Service (collectively, the "Complimentary Services"). For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

- (i) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Section 3.11(A)-(E) above. City may make a separate election for each account or line of service identified in the notice (for example, City may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving Complimentary Services with copies of those notice(s) sent to the City.
- (ii) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The City likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311, and that this Order is on appeal. Should there be a final Order in the appeal of the 621 Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the

City's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred twenty (120) days of written notice from the City, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the City's regulatory authority.

3.12 Tax Liability

The Franchise Fees shall be in addition to any taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems reasonably necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by Applicable Law.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions

established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Reserved.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Unless another process is specifically referenced in other Sections of this Franchise, within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules;

provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, pandemics, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or third-party claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents (not to include the City), or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City under this Franchise or Applicable Law.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises which is covered by the provisions of 5.1 of this Franchise, the City or any other indemnified party shall promptly tender sole control of the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for City's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval; provided, however, such approval shall not be unreasonably withheld, conditioned, or delayed by the City.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld, conditioned, or delayed. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance, but in no event shall occurrence basis minimum limits be less than provided for by C.R.S. §24-10-114(1)(b):

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts

required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City and such approval shall not be unreasonably withheld, conditioned, or delayed.

5.4 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of ten thousand dollars (\$10,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained ten thousand dollars (\$10,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall place the City’s phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City’s Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any

such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way owned by the Grantee, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within sixty (60) days of the City's written request, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction by Grantee, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the City's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the City to the contrary.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to

such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the City to Grantee; and,
- (4) Such other information as reasonably requested by the City.

The parties agree that the City's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the City to the contrary.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), may, at the City's option, be deemed a breach of this Franchise.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad

categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City, and such consent shall not be unreasonably withheld, conditioned, or delayed.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available its standard parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with City in City's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to the City six (6) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) High Definition ("HD") Digital Access Channels.

(1) Each of the six (6) Downstream Channels for PEG Access use shall be in a High Definition ("HD") digital format ("HD Access Channel or Channels"), and provided as part of Grantee's Basic tier of service.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of at least 1080, or such other resolution in this same range that Grantee utilizes for commercial programming channels on the Cable System, whichever is greater.

(3) Grantee shall, at no cost to the City, transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules &

Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(C).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(D) There shall be no restriction on Grantee's technology used to deploy and deliver HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. In addition, Grantee will make reasonable efforts to locate Access Channels provided pursuant to Subsection 9.2 in a location on its Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide City a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

9.5 PEG Channel Application

(A) To the extent that Grantee provides, as part of the Cable Services offered to Subscribers, applications to stream video programming, it shall provide, at no cost to the City, an application to link Subscribers to Access programming through the Cable System.

(B) Any costs incurred by Grantee in facilitating the application to receive Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Video on Demand

(A) Grantee shall provide the City (or its Designated Access Provider) fifty (50) hours of Video On Demand ("VOD") capacity on Grantee's Cable System VOD platform for PEG Access programming, in accordance with the provisions of this Section 9.6. For purposes of this Franchise, the PEG Access programming that City or any Designated Access Provider submits to Grantee's VOD platform shall be referred to as "PEG VOD Programming."

(B) The City shall be responsible for acquiring, at its cost, all equipment necessary to produce and deliver the PEG VOD Programming in the format required for Grantee's VOD servers, including the cost of any necessary return line upgrades, and the transmission equipment needed to transmit it to Grantee in the format required; provided however that such requirements shall be no different that imposed upon other providers of video on demand programming content available on Grantee's Cable System.

(C) The City and/or a Designated Access Provider shall be responsible for uploading PEG VOD Programming to the VOD server pursuant to the procedures required by Grantee's VOD system, this Section 9.6, and any the terms imposed upon all other video on demand content providers on the Cable System. Upon request, Grantee shall provide monthly reports to the City showing the number of views of VOD programming provided by the City.

(D) The City and/or a Designated Access Provider shall be additionally responsible for entering all necessary information for populating the VOD menu system. While Grantee shall determine, in its sole discretion, the specific placement of PEG VOD Programming within the VOD menu system, Grantee will use reasonable efforts to locate such programming near similar government or educational programming, or Colorado based programming in the VOD menu listings, so that such PEG VOD Programming is as comparably accessible as other similar government or education or Colorado based programming offered through the Cable System's VOD menu.

(E) The City acknowledges that VOD programming may require special viewer equipment and subscription to advanced service tiers and that, by agreeing to make PEG VOD Programming available on VOD, Grantee shall not be required to provide free VOD-capable equipment to Subscribers, nor to modify its equipment or pricing policies in any manner. Not all television equipment may be able to access VOD programming, and additional Subscribers costs may be incurred in the reception of VOD programming.

9.7 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the City's PEG Access capital costs have reduced with time, the City and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The City and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access.

9.8 Access Channels and Support Not Franchise Fees

Grantee agrees that provision of Access Channels, capital support for Access Costs arising from or relating to the obligations set forth in this Section and other requirements of this Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law. Grantee reserves all rights under Applicable Law, including rights that may arise from Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311 and nothing in this Section 9.8 shall be construed as a waiver of Grantee's rights under Applicable Law.

9.9 Access Channels on Basic Service or Lowest Priced HD Service Tier

All Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service.

9.10 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.11 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Sections 9.5 and 9.6. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any PEG Access transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' Access programming.

9.12 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.13 Return Lines/Access Origination

(A) Grantee shall, at no cost to the City, install and continuously maintain four (4) return lines to the City (9197th Street, Greeley); the Greeley-Evans School District #6 (1025 9th Avenue, Greeley); Aims Community College (5401 West 20th Street, Greeley) and the University of Northern Colorado (Candelaria Hall, Room 1395).

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed upon the later of: within one (1) year from the request of the City or its Designated Access Provider; (ii) thirty-six (36) months from the date of this Agreement; or (iii) as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

10.3 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware by reasonable prior written notice by City, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share

bores or cuts, Grantee shall use commercially reasonable efforts work in good faith with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with industry standard engineering practices in effect at the time of installation.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee. City acknowledges and agrees no City permits shall be required for drop work that is outside of Right of Way or drop work that does not involve the disturbance of hardscape infrastructure (*e.g.*, concrete or asphalt).

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, the International Mechanical Code, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.8 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Rights-of-Way.

10.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.10 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee.

10.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City representative or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all located underground facilities within the area of the proposed excavation owned by Grantee;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation owned by Grantee; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.14 Underground Construction

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently

placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on equipment of the City or any other Person. Copies of agreements for the use utility facilities must be provided upon request by the City.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintain, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of the Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities and not within sidewalks or within sight distance triangles causing sight distance issues for those using City Streets.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.15 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.16 Burial Standards

(A) Depths. Unless otherwise required by law or the written instructions of the City, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been

buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Beginning twenty-four (24) months after the Effective Date of this Agreement, cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.18 Prewiring

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems. The City shall give the same notification to Grantee that it gives to any electrical or telephone service companies as set forth in its ordinance.

10.19 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in

writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.20 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the City, to the extent space therein or thereon is available (as such availability is determined by Grantee in its reasonable discretion), and pursuant to all applicable ordinances and codes. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, and for use by the City's broadband network, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee.

10.21 Reserved.

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.23 Discontinuing Use/Abandonment of Cable System Facilities

Discontinuance of use, abandonment, and conveyance of abandoned Cable System facilities shall be governed by the terms of Grantee's Master License Agreement with the City.

10.24 Movement of Cable System Facilities for City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.27 Reservation of City Use of Right-of-Way; Reimbursement of Grantee Costs from Third Parties

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. Grantee specifically reserves any rights it may have under Applicable Law for reimbursement of costs from third parties related to undergrounding or relocation of the Cable System and nothing herein shall be construed as a waiver of such rights.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 860 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twenty-four (24) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test

indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Upon request by City, Grantee shall provide to the City a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscriber and shall provide the City with any amendments or modifications to the process at such time as they are made.

(B) Upon request by City, Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the City for a period of at least one (1) year, and individual Subscriber complaints from the City for a period of at least three (3) years, and make such information available to the City upon reasonable request.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) Grantee shall perform any tests required by the FCC.

(E) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which in the reasonable judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;

- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, beginning twenty-four (24) months after the Effective Date, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City at a location that is passed by the Cable System. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non discriminatory monthly rates for Residential Subscribers.

(B) Notwithstanding anything to the contrary in this Agreement, the Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any annexed area which is not contiguous to the present Franchise Area of the Grantee or to any area which is financially or technically infeasible. Upon the annexation of any additional land area by the Grantor, the annexed area shall become part of the Franchise Area and subject to the terms of this Agreement; and, the Grantee's rights and duties under this Agreement shall be deemed to include such annexed land; provided, Grantor shall provide Grantee a commercially

reasonable time to extend its facilities to the annexed Franchise Area and any such extension shall be subject to the terms of this Section 12.1(B) including, without limitation, Grantee's right to refuse to extend into the annexed Franchise Area if Grantee reasonably determines the extension is financially or technically infeasible.

(C) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned (i) upon the Grantee having legal access to said unit; and (ii) such offering being commercially and technically feasible, as determined in Grantee's reasonable discretion. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

12.2 Connection of Public Facilities

Grantee shall upon request of City, at no cost to the City, provide one outlet of Basic Service (not including any set-top boxes or similar equipment) to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are located within 150 feet of its Cable System, and so long as other cable operator(s) provide similar benefits to other such facilities within the City under the same terms and conditions. For purposes of this subsection, "school" means all State Licensed Pre-Schools and State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;
- (2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities owned by the Grantee from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Reserved

13.5 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120)

days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under Applicable Law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The City may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material

breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) Subject to the provisions of Section 2.3, the City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the

provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutual agreed upon renewed Franchise Agreement and Grantee and City are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in this Franchise, and Grantee and City shall continue to comply with all obligations and duties under the Franchise until final City action is taken to review or terminate the Franchise pursuant to Applicable Law.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance or resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

ALLO Greeley, LLC
330 S. 21st Street
Lincoln, Nebraska 68510
Attn: Brad Moline

With copy to:

ALLO Greeley, LLC
Attn: Legal Department
121 S. 13th Street, Suite 100
Lincoln, Nebraska 68508

The City's address shall be:

City of Greeley
1000 10th Street
Greeley, Colorado 80631
Attn: City Manager

With a copy to:
Greeley City Attorney
1100 10th Street, Suite 401
Greeley, Colorado 80631

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Summit County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Greeley, Colorado this ____ day of _____, 2021.

ATTEST:

CITY OF GREELEY, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

City Attorney

City Manager

Accepted and approved this _____ day of _____, 2021.

ATTEST:

ALLO Greeley, LLC

Public Notary

Name/Title: _____

EXHIBIT A: CUSTOMER SERVICE STANDARDS

**City of Greeley
(revised May 17, 2016)**

Introduction

The purpose of the Customer Service Standards (“Standards”) is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the City of Greeley (“Greeley” or the “City”). The Standards are subject to change from time to time.

Greeley encourages Cable Operators to exceed these standards in their day-to-day operations and as such, understands that a Cable Operator may modify their operations in exceeding these standards.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and model customer service standards developed by the Colorado Communications and Utility Alliance. Based upon Greeley’s assessment of the needs its citizens, the City modified and created standards specially tailored to meet local needs.

The Standards require a cable operator, in certain circumstances, to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable operator fails to respond to a citizen complaint that the City determines is valid and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the City that the security fund will never need to be drawn upon; however, the City believes that some enforcement measures are necessary.

CUSTOMER SERVICE STANDARDS

I. POLICY

The Cable Operator should resolve citizen complaints without delay and interference from the City.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the City should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the City should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City of Greeley.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the Standards within the City's jurisdiction under applicable ordinances and laws.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the City of Greeley, Colorado.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

“Escalated complaint” shall mean a complaint that is referred to a Cable Operator by the City.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

“Normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

“Normal operating conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

B. Accessibility

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and requests.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of

operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer

requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the customer's location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the City during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the City an executive summary quarterly, which shall include information concerning customer complaints referred by the City to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the City that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the City by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the City that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the City quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the City with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be

preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the

customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the City, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

i. For pedestal installation or similar major construction, seven (7) days.

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangers must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
 - b. The Cable Operator's complete range of service options and the prices for these services;
 - c. The Cable Operator's billing, collection and disconnection policies;
 - d. Privacy rights of customers;
 - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
 - f. Use and availability of parental control/lock out device;
 - g. Special services for customers with disabilities;
 - h. Days, times of operation, and locations of the service centers;
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by the City, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the City does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;
- If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.
3. Upon written request, a Cable Operator shall meet annually with the City to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the City at least thirty (30) days prior to the time such changes are to be effective, in order to inform the City of such changes.
4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) with the City.
5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals

through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services."

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the City required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with City if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the City from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator’s bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator’s bill to the Customer, and on the Cable Operator’s website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the City. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the City in its reasonable discretion.

G. Safety

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. Cancellation of New Services

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.

2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the City notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the City's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the City in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the City.
5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the City.
6. A Cable Operator's complaint procedures shall be filed with the City prior to implementation.

B. Complaints to the City

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the City.
2. The customer may initiate the review either by calling the City or by filing a written complaint together with the Cable Operator's written decision, if any, with the City.
3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.
4. If the City decides that further evidence is warranted, the City shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the City may deem necessary to an understanding and determination of the complaint.
6. The City shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.
7. The City may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

C. Security Fund or Letter of Credit

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the City that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the City twenty-five thousand dollars (\$25,000) or, in the sole discretion of the City, such

lesser amount as the City deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the City an irrevocable letter of credit in the same amount.

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the City. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The City may require the Cable Operator to increase the amount of the Security Fund if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the City may otherwise have.

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the City.

E. Procedure for Remediating Violations

1. If the City has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the City may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the City determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the City may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter and/or

d. Grant a specific solution as determined by the City; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

V. MISCELLANEOUS

A. Severability

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards. Revised 5/17/16.

EXHIBIT B Report Form

ALLO
Quarterly Executive Summary - Escalated Complaints
Section 7.6 (B) of our Franchise Agreement
Quarter Ending _____, Year
GREELEY, COLORADO

<u>Type of Complaint</u>	<u>Number of Calls</u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<u>TOTAL</u>	0

Compliments

Council Agenda Summary

Key Staff Contact: Brad Mueller, Community Development Director, 970-350-9786

Mike Garrott, Planning Manager, 970-350-9784

Title:

Public hearing to consider a change of zone from PUD (Planned Unit Development - Promontory Preliminary PUD) to PUD (Planned Unit Development - Promontory Preliminary PUD, Areas M & N, 1st Amendment) zoning within Tract B, Promontory Imagine School, Second Filing only for approximately 40.91 acres of property, located north of Highway 34 Bypass, east of Promontory Parkway and south of future 20th Street, known as Promontory PUD, Areas M & N, 1st Amendment, and final reading of an ordinance changing the official zoning map to reflect the same

Summary:

The applicants are requesting to rezone approximately 40.91 acres from PUD (Planned Unit Development) to PUD (Planned Unit Development), known as the Promontory Preliminary PUD, Areas M & N, 1st Amendment, and remove the commercial acreage cap within Tract B, Promontory Imagine School, Second Filing. As proposed, the applicants also request to consolidate uses to allow all C-H (Commercial High Intensity and R-H (Residential High Density) uses, including school uses. These proposed uses are found in the attached Planning Commission Summary.

The existing PUD allows for the following uses:

Area N : animal uses, veterinary clinics (no outdoor runs), art, dance, photo studios, galleries, auto uses, car wash, banks, savings and loan, financial institutions, ATM's, drive-up windows, bars, taverns, nightclubs, lounges, bowling alleys, brew pub, convenience stores with or without gas sales, dry cleaning (no cleaning on-site), gas stations, gas stations with repair, lube and tire shops, laundromats, personal service shops (beauty, barber, tanning and nail salons, shoe repair, similar, pet stores, printing, copying shops, mail centers, membership clubs, health clubs, marital areas studios, restaurants – cafes, and other eating establishment (including outdoor seating eating areas), drive up windows, Retail sales – under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet).

Area M: Single family dwellings, multi-family dwellings, two family dwellings, townhouse dwellings, as well as the following uses, not to exceed 15% of the acreage contained within each Planning area: banks, savings and loan, financial institutions, ATM's, drive-up windows, medical and dental offices and clinics, hotel, motel, office, recreation uses – community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional), restaurants, retail sales not to exceed 40,000 square feet, fire stations, schools, recreation uses.

The subject site is located north of Highway 34 Bypass, east of Promontory Parkway and south of future 20th Street.

The Planning Commission considered this request on May 11, 2021 and recommended approval by a vote of 7-0.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

Consideration of this matter is a quasi-judicial process.

Other Issues and Considerations:

None noted.

Strategic Work Program Item or Applicable Council Priority and Goal:

Consistency with Comprehensive Plan and Development Code standards.

Decision Options:

- 1) Adopt the ordinance as presented; or
- 2) Amend the ordinance and adopt as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

- A) A motion that, based on the application received and the Project Summary and accompanying analysis, the proposed amendment to the Promontory Preliminary PUD, Areas M & N, within Tract B, Promontory Imagine School Second Filing, meets the applicable Development Code criteria, Sections 24-625 (c)(3) a. b. f. g. and h. and Section 24-663 (b) 1 and 2; and, therefore, the rezoning is approved.
- B) A motion to adopt the ordinance and publish with reference to title only.

Attachments:

Ordinance

Planning Commission Minutes-Draft (May 11, 2021)

Planning Commission Summary (Staff Report) (May 11, 2021)

PowerPoint Presentation

**CITY OF GREELEY, COLORADO
ORDINANCE NO. _____, 2021
CASE NO. ZON2021-0002**

AN ORDINANCE CHANGING THE OFFICIAL ZONING MAP OF THE CITY OF GREELEY, COLORADO, FROM PUD (PLANNED UNIT DEVELOPMENT - PROMONTORY PRELIMINARY PUD) TO PUD (PLANNED UNIT DEVELOPMENT - PROMONTORY PRELIMINARY PUD, AREAS M & N, 1ST AMENDMENT) ZONING WITHIN TRACT B, PROMONTORY IMAGINE SCHOOL, SECOND FILING ONLY FOR APPROXIMATELY 40.91 ACRES OF PROPERTY, LOCATED NORTH OF HIGHWAY 34 BYPASS, EAST OF PROMONTORY PARKWAY AND SOUTH OF FUTURE 20th STREET

BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The property described in the legal description attached and marked Appendix A located in the City of Greeley is hereby changed from the zoning district referred to as Planned Unit Development - Promontory Preliminary PUD, to Planned Unit Development - Promontory Preliminary PUD, Areas M & N, 1st Amendment), in the City of Greeley, County of Weld, State of Colorado.

Section 2. The boundaries of the pertinent zoning districts as shown on the official zoning map are hereby changed so as to accomplish the above-described zoning changes, and the Mayor and City Clerk are hereby authorized and directed to sign and attest an entry which shall be made on the official zoning map to reflect this change.

Section 3. This ordinance shall become effective five (5) days after its final publication as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS _____ DAY OF _____, 2021.

ATTEST

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

APPENDIX A
LEGAL DESCRIPTION

Tract B, Promontory Imagine School Second Filing, recorded September 18, 2019 as Reception No. 3415275 of the Weld County Clerk and Recorder, situate in the Southwest Quarter (SW1/4) of Section Twelve (12), Township Five North (T.5N.), Range Sixty-seven West (R.67W.) of the 6th Principal Meridian, City of Greeley, County of Weld, State of Colorado

City of Greeley, Colorado
PLANNING COMMISSION PROCEEDINGS
May 11, 2021

I. Call to Order and Roll Call

Chair Yeater called the remote meeting to order at 1:15 p.m. via the City's Zoom platform.

The hearing clerk called the roll.

PRESENT

Chair Justin Yeater
Commissioner Brian Franzen
Commissioner Larry Modlin
Commissioner Chelsie Romulo
Commissioner Christian Schulte

ABSENT

Commissioner Louisa Andersen
Commissioner Erik Briscoe

Commissioner Briscoe joined the meeting at 1:16 p.m.

II. Acceptance of Agenda

Commissioner Romulo moved to accept the agenda. Commissioner Franzen seconded the motion. Motion carried 6-0. (Commissioner Andersen was absent.)

III. Approval of April 27, 2021 Minutes

Commissioner Romulo moved approve the minutes dated April 27, 2021. Commissioner Modlin seconded the motion. Motion carried 6-0. (Commissioner Andersen was absent.)

IV. Public meeting to consider a request for a preliminary plat on a 162.668 acre site to create 4 lots and 6.592 acres of dedicated rights-of-way

Project: Tointon Academy Preliminary Subdivision Plat

Case No.: SUB2020-0028

Applicant: Thomas Rudary of DLR Group, on behalf of Kent Henson of Greeley-Evans School District, and the City of Greeley

Location: West of 71st Avenue, east of 77th Avenue, north of 10th Street, and south of 4th Street

Presenter: Brittany Hathaway, Planner III

Ms. Hathaway addressed the Commission and introduced as a request for a preliminary plat to create four lots and dedicate 6.592 acres of rights-of-way on a 162.688-acre site to allow for realignment of the Boomerang Links Golf course

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Planning Commission finds that the proposed Final PUD Amendment is in compliance with the Development Code and is consistent with the Preliminary PUD; and, therefore, approves the Final PUD Amendment that revises the allowed uses on Lot 2, as presented. Commissioner Romulo second the motion. Motion carried 7-0.

VII. Public hearing to consider a request for a Preliminary PUD Amendment to add all C-H (Commercial High Intensity) and R-H (Residential High Density) uses, including schools, and removing the commercial acreage cap within Tract B, Promontory Imagine School Second Filing only

Project: Promontory Preliminary PUD, Areas M & N, 1st Amendment

Case No.: ZON2021-0002

Applicant: Weldco Land Investors LLC

Location: North of Highway 34 Bypass, east of Promontory Parkway, south of future 20th Street

Presenter: Mike Garrott, Planning Manager

Mr. Garrott addressed the Commission and introduced the item as a request for a preliminary PUD amendment to change some of the uses within specific areas from an earlier PUD approval in 1999. He presented an aerial photograph showing the location of the property located in the Promontory area. Mr. Garrott also presented a map of the original Tri-Pointe PUD approved in 1999 and highlighted Tract B and Areas M and N, which are the subject to today's hearing.

Mr. Garrott provided a plat of Promontory Imagine School Second Filing, adding that the name was provided because a charter school was originally planned for a portion of the site. He noted that Tract B came about through a replatting process. Mr. Garrott provided an aerial photograph of the entire area. Mr. Garrott provided a list of allowed uses within Areas M and N, with Area M being mostly residential and Area N being mostly commercial. The applicant requests to allow Tract B (Areas M and N only) to be rezoned to allow for all C-H uses, R-H uses, including schools. Mr. Garrott also presented photographs of the site.

Mr. Garrott described the zoning criteria of Section 24-625 and indicated that all criteria had been met and complies with the Comprehensive Plan. He added that the proposal matches the zoning suitability plan and complies with the preliminary PUD standards. Notices were mailed to seven property owners within 500 feet, signs were posted on the site and notice was placed in the newspaper with no comments received. Staff recommended approval.

Randy Schwartz, the property owner and applicant, 9193 E. Vassar Avenue, Denver, Colorado, addressed the Commission and advised that the purpose of the request is to clean up old and dated zoning with input from planning.

Chair Yeater opened the public hearing at 1:55 p.m. There being no communication by U.S. mail, email, Zoom Chat or Q&A, the public hearing was closed at 1:56 p.m.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Planning Commission finds that the proposed amendment to the Promontory Preliminary PUD, Areas M & N, within Tract B, Promontory Imagine School Second Filing, meets the applicable Development Code criteria, Sections 24-625(c)(3) a, b, f, g and h and Section 24-663(b) 1 and 2; and, therefore, recommends approval of the rezone to the City Council. Commissioner Romulo second the motion. Motion carried 7-0.

VIII. Public hearing to consider amending Title 24 of the Municipal Code regarding household occupancy standards, specifically regarding the number of unrelated adults allowed to comprise a household, as found in the definition of “family” in Section 24-5

Project: Code Update – Household Occupancy Standards

Case No.: CU2021-0001

Applicant: City of Greeley

Presenter: Caleb Jackson, Planner II

Chair Yeater began by stating that it was anticipated there might be several people wishing to speak during the public hearing. He advised that everyone wishing to speak would be invited at the appropriate time and would receive an opportunity to speak.

Mr. Jackson addressed the Commission and provided a recap of some of the reasons to reevaluate the housing occupancy standard that had been described in prior hearings, including a City Council initiative, “Your Home is Here” that looks at providing varied housing choices and also addressing recommendations in the Strategic Housing Plan adopted by City Council. Mr. Jackson described some of the obstacles including increasing pressures on finances, low housing stock, increased home prices, and changing demographics.

Mr. Jackson noted the current definition of “family” in the Code that includes three descriptions, including 1) an individual living alone, 2) any number of persons interrelated by blood, marriage, adoption or other legal custodial relationship, or 3) not more than two unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or other legal custodial relationship. Mr. Jackson pointed out that under the current definition, a married couple cannot add any unrelated adults. He added that in high density residential and commercial zones there is currently no limit to the number of unrelated adults, and that is not proposed to change. Mr. Jackson provided a few scenarios allowed by the current standard in lower density zones, Residential Estate (R-E), Residential Low Density (R-L), Residential Medium Density (R-M) and Residential Mobile Home (R-MH) that include a married couple plus zero unrelated adults, a single person plus one unrelated adult, or an unmarried couple plus zero unrelated adults.

Mr. Jackson briefly described the vetting process that has been presented at previous hearings, including the Housing Task Force, Code Advisory Committee, an initial public questionnaire in January-March 2021, Council worksession in February 2021, second public questionnaire in February-March 2021, a public

PLANNING COMMISSION SUMMARY

ITEM: Amendment to the Promontory Preliminary PUD

FILE NUMBER: ZON2021-0002

PROJECT: Promontory Preliminary PUD, Area M & N, 1st Amendment

LOCATION: North of Highway 34 Bypass, east of Promontory Parkway and south of future 20th Street.

APPLICANT: Randy Schwartz on behalf of Weldco Investors LLC

CASE PLANNER: Mike Garrott AICP, Planning Manager

PLANNING COMMISSION HEARING DATE: May 11, 2021

PLANNING COMMISSION FUNCTION:

The Planning Commission shall consider the staff report, along with testimony and comments made by the applicant and the public and shall then make a recommendation to the City Council regarding the application in the form of a finding based on the review criteria in Section 24-625 (c)(3) and 24-663 (b)(1-2).

EXECUTIVE SUMMARY

The City of Greeley is considering a request by Randy Schwartz on behalf of Weldco Investors LLC for a Preliminary PUD amendment. The applicant is proposing to add all C-H (Commercial High Intensity) and R-H (Residential High Density) uses, including schools, and remove the commercial acreage cap within Tract B, Promontory Imagine School Second Filing only (see Attachment C). The property consists of approximately 40.92 acres. (*See Attachment A – Vicinity Map*)

A. REQUEST

The applicant is requesting approval of the PUD Amendment. (*See Attachment A – Vicinity Map and Attachment B – Project Narrative*).

B. STAFF RECOMMENDATION

Approval

C. LOCATION

Abutting Zoning:

North: PUD (Planned Unit Development)
 South: Highway 34 Bypass
 East: PUD (Planned Unit Development)
 West: PUD (Planned Unit Development)

Surrounding Land Uses:

North: Fire Station No. 6
 South: Highway 34 Bypass
 East: Vacant (Farm land)
 West: Undeveloped, Commercial

Site Characteristics:

The site is currently undeveloped with no natural, unique, or special topography, vegetation, wildlife or other factors, which could influence development options. Perimeter landscaping has been installed along Promontory Parkway, at the intersections of Promontory Parkway and 20th Street, and at the entrance of Highway 34 Bypass and Promontory Parkway. Twentieth Street was recently constructed north of the subject site, as part of Fire Station No. 6 construction. Detached sidewalks exist along Promontory Parkway, but do not currently exist along Hwy 34 Bypass. The property slopes from the northwest to the south and southeast. Drainage is conveyed to an existing detention pond and storm water line (southeast corner of US Hwy 34 Bypass and Promontory Parkway).

D. BACKGROUND

The property was annexed into the City in 1985 as part of the Golden Triangle Second Annexation (File No. 2:85) and zoned PUD, which consisted of an area of approximately 1,701 acres. The intent of the concept Golden Triangle PUD was to allow for mixed-use development, including open space, residential, commercial, industrial, and recreational uses. The conceptual PUD plan shows light industrial development, business office, park, and commercial uses on the southern portion of the PUD area that transitioned to various densities of residential and recreational/open space uses to the north.

In 1997, the City Council approved an amendment, which broke the Golden Triangle Concept PUD from one PUD into six PUDs (File No. PUD 11:97). The amendment was intended to streamline the PUD approval process. Under the 1976 Development Code, PUD actions required all land owners to sign off on development plans. As the largest PUD in the City at the time, 1,701 acres, this requirement was found to be cumbersome. The concept PUD was split into six smaller PUDs, with each assigned a set of allowed uses based on the concept PUD plan. The subject site is located in the Golden Triangle Concept PUD #1. In accordance with the Golden Triangle Concept PUD, PUD #1 allowed industrial uses only.

On December 1, 1998, the City Council approved an amendment to the Golden Triangle PUD, which rezoned the subject property from PUD (Golden Triangle) to PUD (Tri-Pointe), (File No.

PUD 8:98). The Tri-Pointe PUD encompassed an area of 668.72 acres. The conceptual plan as approved, allowed for a mixture of land uses, varying from residential, institutional, corporate headquarters, general commercial, and a requirement for the dedication of parks, schools, fire station location.

On March 16, 1999, the City Council approved a second amendment to the Tri-Pointe PUD (File No. PUD 3:99) which amended the PUD and formally changed the name of the PUD to Promontory. This amendment capped the amount of allowed retail to 84.54 acres, increased the residential acreage cap from 200 acres to 250 acres (a minimum of 900 dwelling units), increased the height allowance for office/business uses from 40 feet to 70 feet and 60 feet for industrial uses, and required the developer to dedicate a 10 acre park as well as a minimum of 1.5 acres for a fire station location (see Attachment D).

On December 21, 1999, the City Council approved modifications to the previous Council hearing on March 16, 1999. At this hearing, the Council approved the allowance for detached sidewalks, site and building design standards, lighting standards, and specified that parking in non-residential areas could exceed 125 percent of the required parking, added a requirement for bicycle parking, revised off-street parking regulations, required landscaping to comply with the City's Development code, and modified the requirement of signatures to submit PUD for approvals. Under the revision, each land owner would be able to sign a waiver letter, "forfeiting their rights, which would allow future PUD's be signed only by those pre-approving the PUD when they buy land. This proposal would be in lieu of application for final PUD approvals being submitted by the property owner, metro district, and 75 percent of all property owners owning 75 percent of the land within that tract or sub-tract". The final provisions added, allowed individual property owners within the individual tracks or areas to be the applicant and did not require the metropolitan district signature for land not owned by the district.

In 1999, the City of Greeley approved two metropolitan districts that serve the Promontory development, which are known as Tri-Pointe Commercial District and Tri-Pointe Residential District (MD 1:99).

On October 4, 2000, a Final Plat was approved for the Promontory Subdivision (PUD 10:99), which created ten super pad lots and numerous tracks (Reception No. 2798115). The subject site was platted as part of Lot 1, which consisted of 287.15 acres. In 2006, the site was replatted into Tract B, Promontory Imagine School, First Filing (Reception No. 3415275), which consisted 134.262 acres. Lot 1 was platted to accommodate a private charter school, which was proposed to be development within Promontory. However, the charter school has decided not to move forward with development.

In 2019, the property owner of Promontory Imagine School, First Filing dedicated 2.5 acres of land for the purpose of a fire station as part of another plat, known as Promontory Imagine School, Second Filing (PUD2019-0011). The approved plat also included, Tract A (94.231 acres), 20th Street right-of-way and the subject property, Tract B, which is 40.920 acres (see Attachment C)

Since the land dedication, the City has finished the construction a new fire station (Station No. 6), which is located directly north of the subject property. .

The subject property lies within two areas identified in the conceptual plan. The western 10 acres, is located directly north of Highway 34 Bypass, east of Promontory Parkway and, south of 20th Street (entirely within Tract N) The remaining portion of Tract B is located generally directly east of the western 10 acres, within a small area north of Tract N, along 20th Street (entirely within Tract M).

The permitted uses currently allowed within the Tri-Pointe PUD (aka Promontory PUD), Area N (Tract B, Promontory Imagine School Second Filing) include: animal uses, veterinary clinics (no outdoor runs), art, dance, photo studios, galleries, auto uses, car wash, banks, savings and loan, financial institutions, ATM's, drive-up windows, bars, taverns, nightclubs, lounges, bowling alleys, brew pub, convenience stores with or without gas sales, dry cleaning (no cleaning on-site), gas stations, gas stations with repair, lube and tire shops, laundromats, personal service shops (beauty, barber, tanning and nail salons, shoe repair, similar, pet stores, printing, copying shops, mail centers, membership clubs, health clubs, marital areas studios, restaurants – cafes, and other eating establishment (including outdoor seating eating areas), drive up windows, Retail sales – under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet)

Area M (Tract B, Promontory Imagine School Second Filing) allows for the following uses: Single family dwellings, multi-family dwellings, two family dwellings, townhouse dwellings, as well as the following uses, not to exceed 15% of the acreage contained within each Planning area: banks, savings and loan, financial institutions, ATM's, drive-up windows, medical and dental offices and clinics, hotel, motel, office, recreation uses – community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional), restaurants, retail sales not to exceed 40,000 square feet, *fire stations, schools, recreation uses – City Council approved on 9/17/2019. See Attachment D.*

The applicants are proposing to consolidate the uses within the entire property to allow all C-H and R-H uses, including school uses (see Attachment E). The applicant is intended to dedicate a portion of the Tract to the Windsor Severance School District for a school site, which would occur through the platting process.

E. APPROVAL CRITERIA

Development Code Section 24-625 Rezoning Procedures

For the purpose of establishing and maintaining sound, stable and desirable development within the City, the rezoning of land is to be discouraged and allowed only under circumstances provided for in this Section [of the Code]. This policy is based on the opinion of the City Council that the City's zoning map is a result of a detailed and comprehensive appraisal of the City's present and future needs regarding land use allocation and other zoning considerations, and, as such, should not be amended unless to correct manifest errors or because of changed or changing conditions in a particular area of the City in general.

The review criteria found in Section 24-625 (c)(3) of the Development Code shall be used to evaluate the zoning amendment application.

- a) **Has the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area?**

Staff Comment: Since the zoning in 1998, two major headquarters have been constructed and over 300 single family lots have been development within the Promontory development. Recently, the City of Greeley constructed Fire Station Number 6, directly north of the subject rezoning. The subject property has remained undeveloped for over 22 years, without any land use approvals (except for replatting) or requests. The applicant has stated that the limitation of land use options has impacted the development options on the tract. As such, the applicant would like to provide more flexibility with the site, by allowing additional commercial and residential land uses and a potential Windsor-Severance school site. Offering additional uses within the subject parcel may help spur new development within the subject parcel, but also could be a catalyst for additional commercial/retail business near or within the Promontory area.

The proposal complies with this criterion.

- b) **Has the existing zoning been in place for at least fifteen (15) years without substantial development resulting and does the existing zoning appear to be obsolete, given development trends?**

Staff Comment: The subject site has been zoned Planned Unit Development (PUD) for over 22 years, without any development within the sites. The zoning designation does not appear to be obsolete, however, adding additional uses to the sites could make the properties more marketable.

The proposal complies with this criterion.

- c) **Are there clerical or technical errors to correct?**

Staff Comment: There are no clerical or technical errors to correct.

This criterion is not applicable to this request.

- d) Are there detrimental environmental impacts, such as flood plains, inadequate drainage, slopes, unstable soils, etc., that may affect future development of this site and which may not have been considered during the original zoning of the property?**

Staff Comment: The site does not contain any known detrimental environmental conditions.

This criterion is not applicable to this request.

- e) Is the proposed rezoning necessary in order to provide land for a community related use, which was not anticipated at the time of adoption of the City's Comprehensive Plan; or have the policies of the City changed to the extent that a rezoning is warranted?**

Staff Comment: The rezone request is not necessary to provide land for community related uses.

This criterion is not applicable to this request.

- f) What is the potential impact of the proposed rezoning upon the immediate neighborhood and the city as a whole (including potential noise and environmental impacts, visual impacts, the provision of City services such as police, fire, water, sewer, and pedestrian systems and parks and recreational facilities)?**

Staff Comment: It is not anticipated that the proposed zoning would create significant impacts on the property or adjacent land uses.

Any potential noise created by future development will be regulated by the Municipal Code. The appropriate buffering would be required to be provided, which lessens any potential visual impacts. City services should not be impacted, since the surrounding area is already served by municipal services such as water and sewer. Police and Fire are already serving this area since it is within the City of Greeley. Any new development would need to connect to the nearby City water and sewer facilities.

The proposal complies with this criterion.

- g) Is there clear and convincing evidence that the proposed rezoning will be consistent with the policies and goals of the City's Comprehensive Plan and comply with the applicable zoning overlay requirements?**

There are no zoning overlay requirements for the subject property. The following City of Greeley Imagine Greeley Comprehensive Plan policies apply to this request:

Education, Health, and Human Services:

- ***EH-2.4 Land Use*** – Promote land use decisions that support walkability and improve access to basic needs, such as neighborhood markets or grocery stores, parks and natural areas, as well as medical and personal services. Support access to goods and services that support health and wellness in all neighborhoods.
- ***EH-4.2 School Siting*** – Collaborate with the school districts in developing long-range school siting plans. Encourage new schools on sites that are:
 - Located near the population they are intended to serve;
 - Co-locate with or near existing facilities and amenities that provide opportunities for shared use and capital improvements, such as City parks;
 - Separated from potential land use hazards or nuisances;
 - Served by transportation options (e.g. roadways, transit, bike path and sidewalks) that provide safe access to and from school; and
 - Sites so as to minimize impacts on the surrounding neighborhood or area and existing transportation network.

Growth & City Form:

- ***GC-2.5 Neighborhood Centers*** – Promote neighborhood centers—small scale retail areas providing basic commercial goods and services—to locate within a walkable distance of residences, usually a quarter mile or less.

Staff Comment: The Imagine Greeley Comprehensive Plan supports compact, pedestrian scaled commercial development that is close to residential neighborhoods. The subject site is located within such a development, and therefore has the potential to contribute to wider option of goods and services available within a walking or biking distance of many residents. The request for additional uses would provide additional options for commercial and residential development to complement the existing development.

The proposal complies with this criterion.

h) What is the potential impact of the proposed rezoning upon an approved Zoning Suitability Plan for the property?

Staff Summary: There is no approved Zoning Suitability Plan for this property. The provided Zoning Suitability Map shows that the property can be development in accordance with the Development Code.

The proposal complies with this criterion.

Standards for PUD establishment: In reaching recommendations and decisions as to rezoning land to the PUD district, the Planning Commission and the City Council shall apply the following standards in addition to the standards and procedures of Section 24-625 applicable to the rezoning of land:

1. Area Requirements

The area of a proposed PUD shall be of substantial size to permit its design and development as a cohesive unit fulfilling the stated purpose of these regulations and to establish the PUD as a meaningful part of the larger community.

Staff Comment: The site contains 40.92 acres; Section 24-663 (b)(1) of the Greeley Development Code limits consideration for PUD establishment to a minimum of two (2) acres in size.

The proposal complies with this criterion.

2. Is the proposed Preliminary/Concept PUD Consistent with the Land Use Chapter of the Comprehensive Plan

A PUD proposal shall be found to be consistent with all applicable elements of the Land Use Chapter of the City's adopted Comprehensive Plan with respect to its proposed internal design and use, its relationship to adjacent areas, and the City as a whole before it may be zoned as a PUD.

The following City of Greeley Imagine Greeley Comprehensive Plan policies apply to this request.

Education, Health, and Human Services:

- ***EH-2.4 Land Use*** – Promote land use decisions that support walkability and improve access to basic needs, such as neighborhood markets or grocery stores, parks and natural areas, as well as medical and personal services. Support access to goods and services that support health and wellness in all neighborhoods.

Growth & City Form:

- ***GC-2.5 Neighborhood Centers*** – Promote neighborhood centers—small scale retail areas providing basic commercial goods and services—to locate within a walkable distance of residences, usually a quarter mile or less.

Staff Comment: The Imagine Greeley Comprehensive Plan strongly supports compact, pedestrian scaled commercial development that is close to residential neighborhoods. The subject site is located within such a development, and therefore has the potential to contribute to wider option of goods and services available within a walking or biking distance of many residents.

The proposal complies with this criterion.

PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site is part of the Promontory Imagine School Second Filing Subdivision (Tract B), which was platted on September 18, 2019 (Rec No. 4524406).

2. HAZARDS

Staff is unaware of any potential hazards that presently exist on the site.

3. WILDLIFE

The site is not located in an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

There are no concerns with drainage and/or erosion on the subject site.

6. TRANSPORTATION

Access to the subject site can be obtain from future 20th Street, adding C-H, R-H and school uses should not negatively impact the area. The City will review any proposed uses, as it relates to transportation at the time of site development.

F. SERVICES

1. WATER

Water services are available in the area and can adequately serve the subject site.

2. SANITARY SEWER

Sanitation services are available in close proximity to all of the parcels within the subject site and can adequately serve the area.

3. EMERGENCY SERVICES

The subject site is within the City of Greeley's Fire Protection area, the closest fire station is Station #6, which is located directly north of the subject site.

4. PARK/OPEN SPACES

No parks or regional open space areas are proposed with this rezone. Any future residential development projects will be required to evaluate the need to provide a park or regional open space.

5. SCHOOLS

No schools are currently located within the subject area. As mentioned previously, the applicant intends to dedicate a site within this proposal for a school site. At this time, there are no current plans to construct a school. The properties are within the Windsor-Severance

School District. The schools that currently serves the area are: Skyview Elementary, Severance Middle School and Severance High School.

6. METROPOLITAN DISTRICT

The Tri-Pointe Commercial Metropolitan District serves Tract B. As mentioned previously in this report, a potential school site is proposed, which as a non-profit user, property taxes would not be paid, which could have a financial impact on the Metropolitan District. At this time, the remaining properties would be accessed the normal metropolitan district tax rate, which is currently 48.79 mills.

G. NEIGHBORHOOD IMPACTS

1. VISUAL

There are no proposed site changes corresponding to the PUD amendment at this time.

2. NOISE

There are no proposed site changes corresponding to the PUD amendment at this time.

H. PUBLIC NOTICE AND COMMENT

Neighborhood notices were mailed to surrounding property owners on April 28, 2021, per Development Code requirements. Additionally, three public notice signs were posted on the subject site on April 30, 2021. Notice was published in the Greeley Tribune on May 5, 2021.

I. MINERAL ESTATE OWNER NOTIFICATION

Mineral notice is not required for a rezone request.

J. PLANNING COMMISSION RECOMMENDED MOTION

Based on the application received and the Project Summary and accompanying analysis, the Planning Commission find that the proposed amendment to the Promontory Preliminary PUD, Areas M & N, within Tract B, Promontory Imagine School Second Filing meets the applicable Development Code criteria, Sections 24-625 (c)(3) a. b. f. g. and h. and Section 24-663 (b) 1 and 2; and therefore, recommends approval of the rezone to the City Council.

K. ATTACHMENTS

Attachment A – Vicinity Map

Attachment B – Project Narrative

Attachment C – Promontory Imagine School, Second Filing Plat

Attachment D – Tri-Point Conceptual PUD Zoning Map

Attachment E – Supplemental Use Tables – Areas M & N only



Subject Parcel



Greeley Parcels



COMMUNITY DEVELOPMENT

Promontory PUD, Areas M and N, 1st Amendment

Project Narrative

This application is to request an amendment to the allowed uses in Areas M and N of the Tri-Pointe Mixed Use Development Conceptual Master Plan, legally described: Tract B, Promontory Imagine School Second Filing, City of Greeley, County of Weld, State of Colorado ("Tract B").

The master plan currently allows mostly residential uses within Area M and mostly commercial uses within Area N. The applicant is requesting to add Schools, all permitted uses for zoning district R-H (Residential High Density) and C-H (Commercial High Density) within Tract B only. All existing land uses shown on the Master Plan will remain listed on Areas M and N.

The Tri-Pointe Mixed Use Development Conceptual Master Plan established the initial concept for the Promontory PUD Development. In fulfillment of the continued demand and growth throughout the Promontory Development the ultimate goal is to evolve the area with a variety of mixed-use services for the current residence and future residence. This development will also help provide service along the Highway 34 corridor. Schools will also help serve the community and any surrounding community's educational obligations.

Please do not hesitate to contact me at robbie@northernengineering.com if you have any questions or require additional information.

Sincerely,

NORTHERN ENGINEERING SERVICES, INC.



Robbie Lauer
Project Manager

PROMONTORY IMAGINE SCHOOL SECOND FILING Attachment C

A Replat of Tract A, Tract B and Outlot A, Promontory Imagine School First Filing,
Situate in the East Half of Section 11 and West Half of Section 12, Township 5 North, Range 67 West of the 6th P.M.,
City of Greeley, County of Weld, State of Colorado

DEDICATION

TAGG Inc, being the sole owner(s) in fee of:

Tract A, Tract B and Outlot A, Promontory Imagine School First Filing recorded August 29, 2006 on Reception No. 3415275 of the Records of Weld County, located in the East Half (E1/2) of Section Eleven (11) and in the West Half (W1/2) of Section Twelve (12), Township Five North (15N.), Range Sixty-seven West (67W.) of the Sixth Principal Meridian (6th P.M.), City of Greeley, County of Weld, State of Colorado.

Said recorded parcel of land contains 144.670 Acres, more or less (A).

shown on the attached map as embraced within the heavy exterior lines thereon, has subdivided the same into lots and blocks as shown on the attached map; and does hereby set aside said portion or tract of land and designate the same PROMONTORY IMAGINE SCHOOL SECOND FILING to the City of Greeley, Weld County, Colorado; and does dedicate to the public, the streets and all easements over and across said said locations shown on said map; and does further certify that the width of said streets, the dimensions of the lots and blocks and the names and numbers thereof are correctly designated upon said map.

Signature of Owner Paul McIntoshWitness my hand and seal this 16th day of September, A.D. 2019**NOTARIAL CERTIFICATE**STATE OF Colorado
COUNTY OF DenverThe foregoing instrument was acknowledged before me this 16th day of September, 2019by Richard McIntosh - President

Witness my hand and official seal.

My commission expires 2/19/21Andrew Gammone
Notary Public(SEAL) ANDREW GAMMONE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 00194000336
MY COMMISSION EXPIRES FEBRUARY 6, 2021**CERTIFICATE OF APPROVAL OF THE CITY ENGINEER TO DEVELOPMENT REVIEW AND CIVIL INSPECTIONS MANAGER**Approved this 16th day of September, 2019, by the City Engineer to Development Review and Civil Inspections Manager of the City of Greeley, Colorado.Paul H. Hahn
City Engineer to Development Review and Civil Inspections Manager**CERTIFICATE OF APPROVAL BY THE COMMUNITY DEVELOPMENT DIRECTOR**Approved this 16th day of September, 2019, by the Community Development Director of the City of Greeley, Colorado.W. Hahn
Community Development Director**SURVEYOR'S CERTIFICATE**

This I, Paul B. Groves, do hereby certify that I prepared this plat from an actual and accurate survey of this land, including all existing right-of-way easements, and that the corner monuments shown thereon were properly placed under my supervision, in accordance with the regulations of the State of Colorado.



Paul B. Groves - On Behalf of King Surveyors
Colorado Licensed Professional
Land Surveyor #38028

BASIS OF BEARINGS AND LINEAL UNIT DEFINITION

Assuming the South line of Tract B, Promontory Imagine School First Filing, as bearing South 89°14'38" West, as monumented as shown on this plat, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1711.56 feet with all other bearings contained herein relative thereto.

The lineal dimensions as contained herein are based upon the "U.S. Survey Foot."

NOTICE

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown herein. (13-80-105 C.R.S. 2012)

TITLE COMMITMENT NOTE

This survey does not constitute a title search by King Surveyors to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of records, King Surveyors refer upon Title Commitment Number TCC20167843, dated August 13, 2016 as prepared by Land Title Guarantee Company to delineate the above-stated information.

FLOOD PLAIN NOTE

The subject property is in flood zone "X", areas determined to be outside the 0.2% annual chance of flooding per FEMA flood map 0812C1511E and 0812C1512E both revised January 20, 2016.

CONVENS NOTE

The entire property is in Zone PUD, Planned Unit Development.

GENERAL NOTES

1. All person who knowingly remove, alters or replaces any public land survey monument(s) or land boundary monument(s), or accessory commits a class two (2) misdemeanor pursuant to State Statute 18-6-508 C.R.S.
2. For all replats where lot lines or street locations change, all existing water and sewer stub-outs, the hydrants, etc. shall be relocated to their appropriate location. Water main and sanitary sewer collection designs in this replatted area must conform to current City of Greeley design criteria.
3. A Development Agreement (Reception No. 2866810 and 3285351) has been filed in conjunction with Promontory Imagine School First Filing plat. That agreement should be viewed for additional stipulations or requirements that may encumber the property.
4. A full access point will be shown on 20th Street West of Lot 1 in the future, see Sheet 2 of 2.



VICINITY MAP
SCALE: 1"=200'

OWNER: TAGG, INC.
4221 BRIGHTON BLVD
DENVER, CO 80231

APPLICANT: CITY OF GREELEY
1000 11TH STREET
GREELEY, CO 80631

ENGINEER: SHORT ELLIOTT HENDRICKSON, INC. (SEH)
2005 SOUTH COLORADO BLVD.
TOWER ONE, SUITE 8000
DENVER, CO 80222

SURVEYOR: KING SURVEYORS
830 GARDEN DRIVE
WINDSOR, CO 80550
PHONE: (303) 686-3011

LAND USE TABLE

LOT 1	2.507 ACRES	2%
TRACT A	94.231 ACRES	65%
TRACT B	40.920 ACRES	28%
RIGHT OF WAY	7.012 ACRES	5%
TOTAL	144.670 ACRES	100%

PARCEL	DESCRIPTION	DEDICATION	AREA	PERCENT	INTENDED OWNERSHIP/MAINTENANCE BY
LOT 1	FIRE STATION #6		2.507 ACRES	2%	CITY OF GREELEY
TRACT A	FUTURE DEVELOPMENT		94.231 ACRES	65%	PROPERTY OWNER
TRACT B	FUTURE DEVELOPMENT		40.920 ACRES	28%	PROPERTY OWNER
RIGHT OF WAY	PUBLIC USE		7.012 ACRES	5%	CITY OF GREELEY
TOTAL			144.670 ACRES	100%	

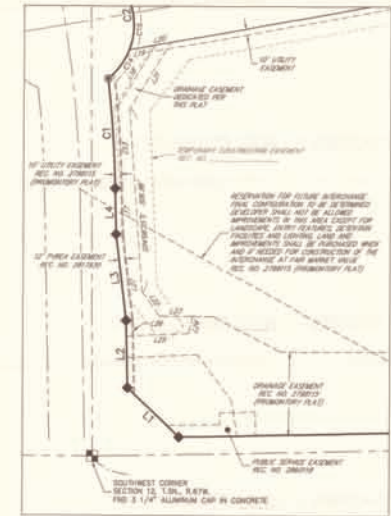
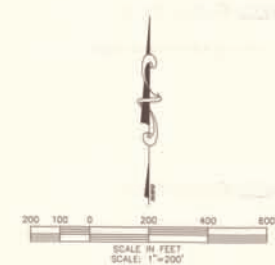
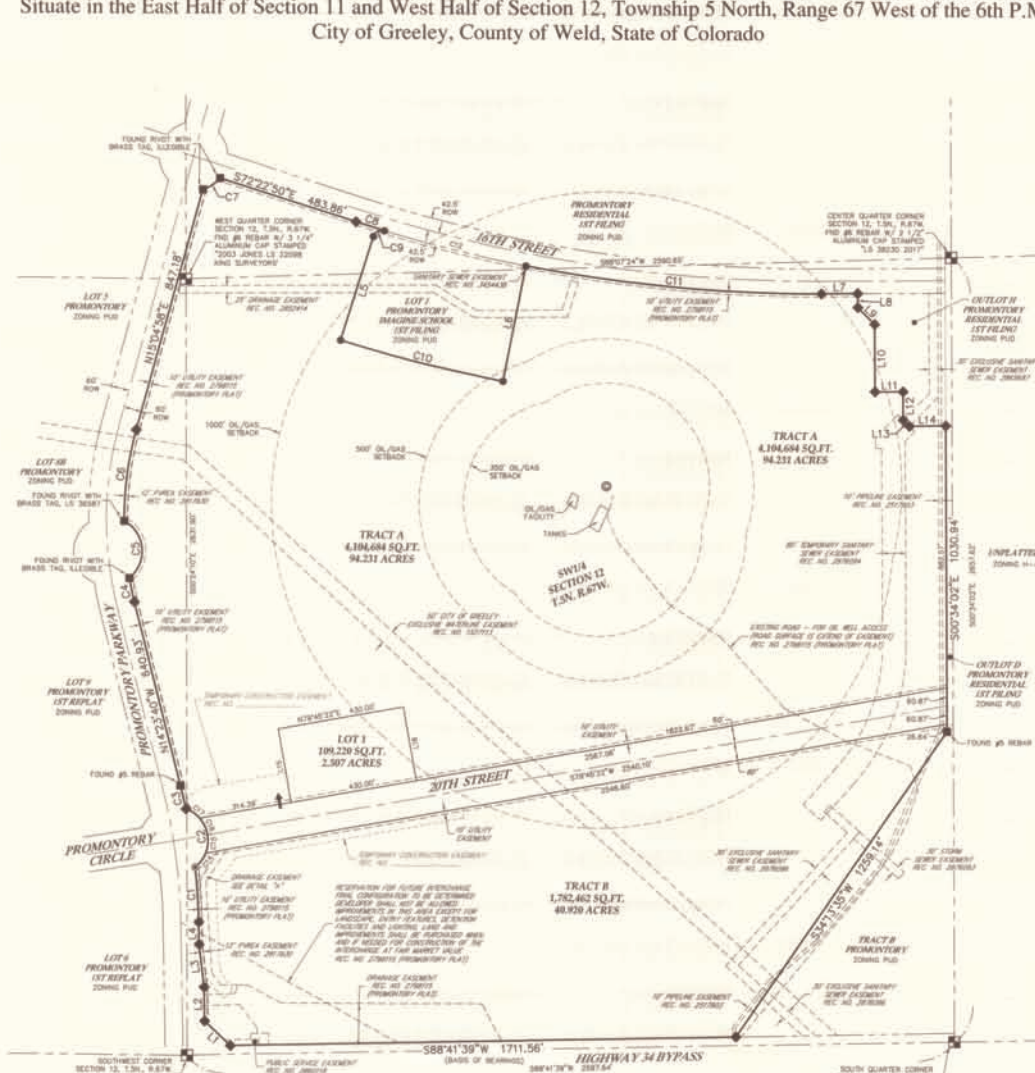
A Replat of Tract A, Tract B and Outlot A, Promontory Imagine School First Filing,
Situate in the East Half of Section 11 and West Half of Section 12, Township 5 North, Range 67 West of the 6th P.M.,
City of Greeley, County of Weld, State of Colorado

Situate in the East Half of Section 11 and West Half of Section 12, Township 5 North, Range 67 West of the 6th P.M.,
City of Greeley, County of Weld, State of Colorado

----	EASEMENT LINE
-----	CENTERLINE
-----	SECTION LINE
-----	RIGHT OF WAY LINE
=====	BOUNDARY LINE
	FOUND ALGULOT CORNER AS DESCRIBED
	SET ALGULOT CORNER AS DESCRIBED
	FOUND WORMHOLE AS DESCRIBED
	FOUND 1/2" REBAR WITH ORANGE PLASTIC CAP LS 13608
	SET 1/2" OF #6 REBAR WITH 6" BLUE PLASTIC CAP STAMPED 4/3, 1/9 30519
	SET RIVET & NUTS STAMPED 4/3, 1/9 30508
	CALCULATED POSITION
	FUTURE FULL ACCESS POINT

LINE TABLE		
LINE	BEARING	LENGTH
1	164°10'33"N	120.57
2	163°10'18"E	114.56
3	160°50'22"W	148.35
4	160°18'17"W	75.34
5	171°32'33"E	18.21
6	44°10'21°N	100.80
7	167°10'18"E	43.67
8	162°34'32"E	41.55
9	164°43'30"E	77.87
10	162°10'32"E	238.74
11	162°10'32"E	85.61
12	164°10'17"E	30.02
13	162°10'32"E	22.82
14	164°10'39"W	254.07
15	161°10'34"E	294.07
16	161°10'34"E	72.8
17	161°10'34"E	122.8
18	161°10'34"E	113.8
19	161°10'34"E	248.7
20	161°10'34"E	248.7
21	161°10'34"E	132.17
22	161°10'34"E	132.17
23	161°10'34"E	161.16
24	171°22'32"E	35.33
25	162°10'32"E	70.21
26	162°10'32"E	28.82
27	162°10'32"E	28.82
28	162°10'32"E	145.16

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	186.34	2080.05	91°08'38"	186.38	N152°53'0"W
C2	344.05	116.50	120°28'28"	201.40	N88°17'28"E
C3	83.72	2080.05	21°53'03"	83.71	N10°34'28"E
C4	78.90	11420.00	42°10'50"	78.85	E22°27'0"E
C5	238.98	116.50	112°54'10"	143.35	S102°26'10"E
C6	311.87	11420.00	19°43'41"	311.89	N88°32'0"E
C7	58.86	118.00	34°43'28"	58.81	N68°29'24"E
C8	100.64	3043.00	17°08'38"	100.65	S17°57'0"E
C9	68.74	3043.00	88°15'38"	68.74	S10°55'30"E
C10	587.35	9443.00	52°58'22"	587.08	S17°08'38"E
C11	1008.81	8043.00	11°26'11"	1008.94	S10°08'38"E
C12	483.49	3043.00	93°38'24"	483.29	S1°49'38"E
C13	138.78	2070.00	97°18'28"	138.75	S10°18'38"E
C14	80.87	118.00	30°04'30"	80.19	S10°50'42"E
C15	83.86	118.00	31°08'33"	83.29	N10°51'42"E
C16	83.86	118.00	31°08'33"	83.29	S10°58'02"E
C17	57.02	118.00	39°08'42"	56.44	S10°28'20"E



DETAIL "A"
SCALE: 1"=10'

Paul B. Groves - On Behalf Of King Surveyors
Colorado Licensed Professional
Land Surveyor #38258

KING SURVEYORS
650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | email: contact@KingSurveyors.com

PLANS/NOTES:	DATE
LOT 7 MOVED & ADDITIONAL EMBLEMENTS	8-28-18
REMOVED BOUNDARY	8-3-18
ADDED TEMP CONSTRUCTION FENCE	8-3-18

PROMONTORY IMAGINE SCHOOL SECOND FILING
FOR
CITY OF GREELEY
1000 10TH STREET
GREELEY, CO 80631

PROJECT #
20180634

2

PAGE 2 OF 2

TRI-POINTE

Mixed Use Development

Conceptual Master Plan

Amendment to the Tri-Pointe Planned Unit Development
Submitted for Westfield Development Company

Zoning Notes

The Project shall be viewed as a single unit.
A waiver for the entire site shall be granted to allow development outside the Mid-Range Expected Service Area expressly contingent upon the issuance of a permit to a major employer for the construction of a minimum facility of 150,000 square feet intended to house at least 300 employees at the site, 500 at full build-out.
No residential or commercial construction shall be allowed until issuance of a building permit for the minimum size 150,000 square foot facility by a major employer.
No fewer than 900 residential units shall be constructed at ultimate build-out.
Any land dedication does not include any water rights.
Should the fire district not require the prescribed land at time of dedication, requirement to dedicate will be waived.
Height Limits: (a) Office uses: 70' excluding enclosed mechanical penthouses or screened rooftop appurtenances.
(b) Retail/Commercial Uses: 40' excluding screened rooftop appurtenances.

All final PUD approvals shall be granted by City Council unless Council approves a set of design guidelines applicable to the various planning areas or uses. In that event, Planning Commission may approve all PUD's governed by those approved guidelines.
This PUD is valid for a period of three years from the date of its approval. If a major employer does not meet the minimum requirements set forth in this PUD within the three year time frame, the entire PUD must return to City Council for review.

Planned Unit Development Criteria

The Tri-Pointe PUD Amendment of 10/16/98 is an amendment to the land uses and development criteria of the existing Tri-Pointe PUD.
Open space requirements are being met within Areas E and F and within the eventual parcel by parcel site plans.

Mixed Use

Land Uses as identified on this PUD may be combined to the extent identified within the land use mix language of this PUD to encourage a creative mixture of housing, work and shopping opportunities. Quantities and types of specific land uses will be determined at Site Plan of the individual parcels.

PROMONTORY PUD, AREAS M AND N, 1ST AMENDMENT

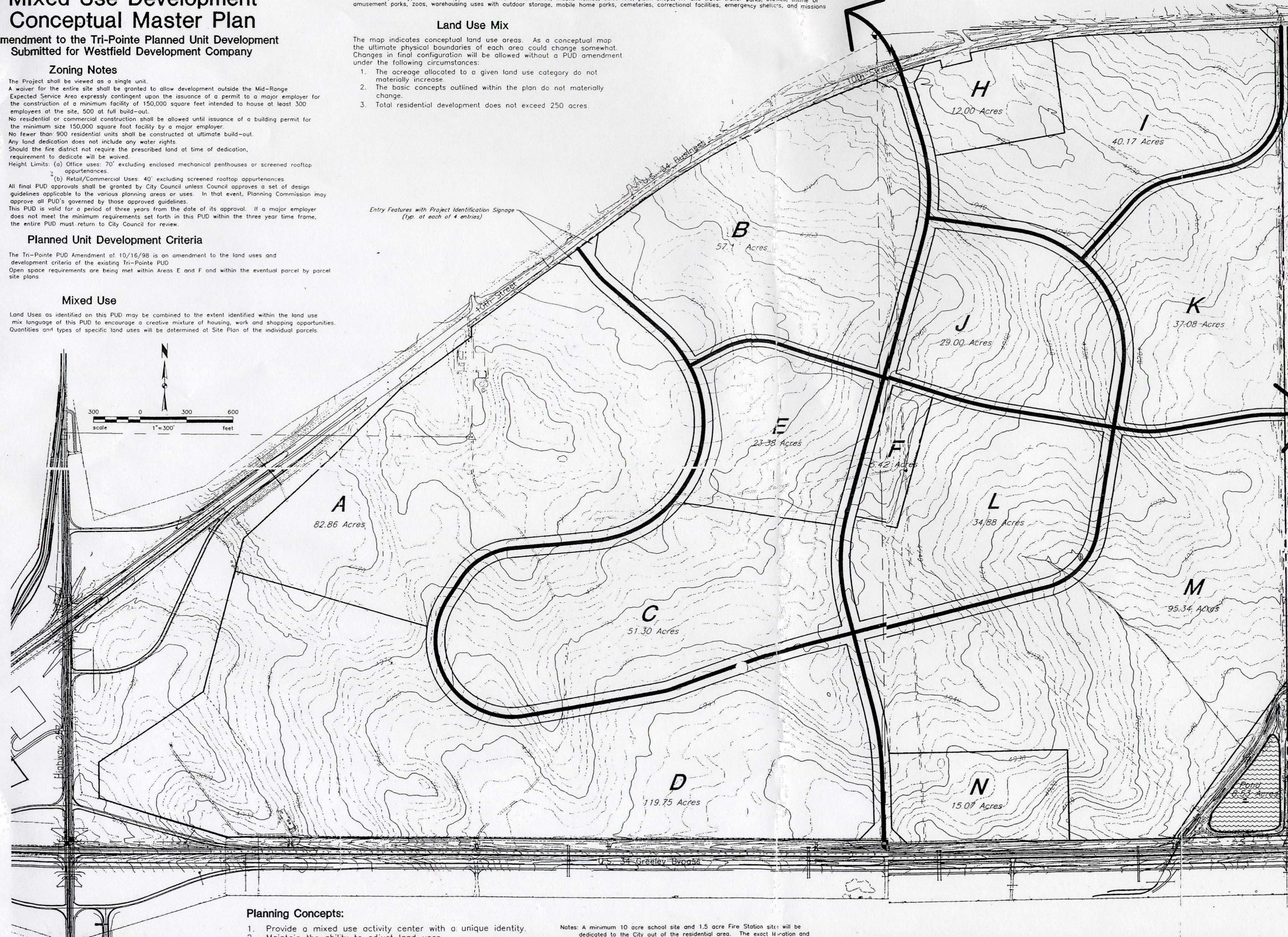
Uses not permitted at Tri-Pointe:
airports, heliports, auto dismantling, junk and salvage yards, bulk storage of flammable liquids and gases for resale concrete, asphalt batch plants (unless temporary for construction purposes only), farm equipment, implement, diesel and fuel sales and repair, food processing, foundries, grain and feed elevators and supply, recycling centers, large collection and processing facilities, refuse transfer stations, rendering plants, slaughterhouse, meat processing, packaging, utility, commercial towers and cabinets over building height permitted by zone, transportation facilities, low impact, high impact, trucking and freight terminals, truck, trailer and large equipment rental, adult entertainment, kennels, auto dealer sales lots, bingo halls and parlors, livestock auction houses, builders, contractor supply offices and yards (except in the case of a Home Depot or Builder's Square type retail facility), flea markets, manufactured mobile homes, sales lots, pawn shops, RV and travel trailer parks, stables, theme or amusement parks, zoos, warehousing uses with outdoor storage, mobile home parks, cemeteries, correctional facilities, emergency shelters, and missions

Land Use Mix

The map indicates conceptual land use areas. As a conceptual map the ultimate physical boundaries of each area could change somewhat. Changes in final configuration will be allowed without a PUD amendment under the following circumstances:

1. The acreage allocated to a given land use category do not materially increase.
2. The basic concepts outlined within the plan do not materially change.
3. Total residential development does not exceed 250 acres.

Entry Features with Project Identification Signage
(Typ. at each of 4 entries)



Allowable Land Use by Area

Area A and B, Office
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Office and corporate headquarters
 - Parking lots and structures
 - Restaurants, deli, cafe, if contained within a primary use building
 - Churches and Schools (Area B only)
 - Recreational areas (Area B only)

Area C, Office/Commercial Use
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Commercial laundries and dry cleaning plants
 - Crematoriums
 - Manufacturing, fabrication, assembly
 - Newspaper and publishing plants, binderies
 - Office and corporate headquarters
 - Parking lots and structures
 - Recycling centers - small collection
 - Restaurants, deli, cafe, if contained within a primary use building
 - Research and testing labs
 - Retail sales only as an enclosed regional mall containing a minimum of two anchor stores and 400,000 square feet
 - Free-standing restaurants only in conjunction with an enclosed mall
 - Multi-family residential not to exceed 25 acres within Areas C and D combined
 - Telecomm. uses
 - Satellite earth station antennas over 18 inches in diameter
 - Utility, comm. towers and cabinets less than building height permitted by zone
 - Utility, comm. towers and cabinets over building height permitted by zone
 - Transportation facilities:
 - Low impact
 - High impact
 - Utility service facilities:
 - Less than 300 sq. ft., no office or storage space
 - More than 300 sq. ft., no office or storage space

Area D, Office/Commercial Use
 - Animal uses - veterinary clinics (no outdoor runs)
 - Art, dance, photo studios, galleries
 - Auto uses, car wash
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Bars, taverns, nightclubs, lounges
 - Bowling alleys
 - Brew pubs
 - Commercial laundries and dry cleaning plants
 - Convenience stores with or without gas sales
 - Crematoriums
 - Dry cleaning (no cleaning on-site)
 - Farmers markets
 - Gas stations
 - Gas stations with repair, lube and tire shops
 - Golf courses, country clubs, driving ranges, miniature golf
 - Laundromats
 - Lodging - Bed and Breakfast, hotels, motels
 - Manufacturing, fabrication, assembly
 - Medical and dental offices and clinics, massage therapists, medical supply stores and rental
 - Movie theaters, indoor theaters
 - Newspaper and publishing plants, binderies
 - Nurseries, greenhouses, garden shops
 - Offices and corporate headquarters
 - Parking lots and structures
 - Personal service shops (beauty, barber, tanning and nail salons, shoe repair)
 - Pet stores
 - Printing, copying shops, mail centers
 - Radio and TV stations with antennas lower than 30 feet
 - Recreation uses - Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, etc.), members clubs, health clubs, martial arts studios, open space, park (pocket), park (neighborhood), park (comm/reg)
 - Recycling centers - small collection
 - Restaurants - cafes, and other eating establishments (including outdoor seating/eating areas), drive-in or drive-thru facilities (including outdoor seating areas), drive-up windows
 - Retail sales - under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet), including a regional mall
 - Auditoriums, sports arenas, stadiums
 - Research and testing labs
 - Multi-family residential not to exceed 25 acres, within Areas C and D, combined
 - Telecomm. uses
 - Satellite earth station antennas over 18 inches in diameter
 - Utility, comm. towers and cabinets less than building height permitted by zone
 - Utility, comm. towers and cabinets over building height permitted by zone
 - Transportation facilities:
 - Low impact
 - High impact
 - Utility service facilities:
 - Less than 300 sq. ft., no office or storage space
 - More than 300 sq. ft., no office or storage space

Area E, Open Space
 This area is intended to be retained as open space to be developed as a park with lake, trails, and improvements associated with same.

Area F, Open Space
 To be dedicated to City for parks, open space, and the extension of

Area H and N, Commercial
 - Animal uses - veterinary clinics (no outdoor runs)
 - Art, dance, photo studios, galleries
 - Auto uses, car wash
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Bars, taverns, nightclubs, lounges
 - Bowling alleys
 - Brew pubs
 - Convenience stores with or without gas sales
 - Dry cleaning (no cleaning on-site)
 - Gas stations
 - Gas stations with repair, lube and tire shops
 - Laundromats
 - Personal service shops (beauty, barber, tanning and nail salons, shoe repair similar)
 - Pet stores
 - Printing, copying shops, mail centers
 - Membership clubs, health clubs, martial arts studios
 - Restaurants - Cafes, and other eating establishments (including outdoor seating areas), drive-up windows
 - Retail sales - Under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet)

Area I, J, K, L, and M, Residential
 - Single family dwellings
 - Multi-family dwellings
 - Two family dwellings
 - Townhouse dwellings
 - The following uses, not to exceed 15% of the acreage contained within each Planning Area:
 - Banks, savings and loans, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics
 - Hotel, motel
 - Office
 - Recreation uses - Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, (pocket), park (neighborhood), park (comm/reg)
 - Restaurants
 - Retail sales not to exceed 40,000 square feet

Area N Commercial and Residential
 - All uses permitted in C-H and R-H Zone Districts
Area M (within Tract B, Promontory Imagine School Second Filing)
 - All uses permitted in C-H and R-H Zone Districts
 - Schools

Planning Concepts:

1. Provide a mixed use activity center with a unique identity.
2. Maintain the ability to adjust land uses.

Notes: A minimum 10 acre school site and 1.5 acre Fire Station site will be dedicated to the City out of the residential area. The exact location and

Promontory Preliminary PUD, Areas M & N, 1st Amendment

Supplemental Use Tables

Areas H and ~~N~~. Commercial – **Proposed - Remove N from this list**

- Animal uses – veterinary clinics (no outdoor runs)
- Art, dance, photo studios, galleries
- Auto uses, car wash
- Banks, savings and loan, financial institutions, ATM's, drive-up windows
- Bars, taverns, nightclubs, lounges
- Bowling alleys
- Brew pub
- Convenience stores with or without gas sales
- Dry cleaning (no cleaning on-site)
- Gas stations
- Gas stations with repair, lube and tire shops
- laundromats
- Personal service shops (beauty, barber, tanning and nail salons, shoe repair, similar
- Pet stores
- Printing, copying shops, mail centers
- Membership clubs, health clubs, marital areas studios
- Restaurants – Cafes, and other eating establishment (including outdoor seating eating areas). Drive up windows
- Retail sales – under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet)

Areas I, J, K, L and M. Residential – **Proposed - remove- Area M for Tract B, Promontory Imagine School Second Filing Only**

- Single family dwellings
- Multi-family dwellings
- Two family dwellings
- Townhouse dwellings
- The following uses, not to exceed 15% of the acreage contained within each Planning area:
 - Banks, savings and loan, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics
 - Hotel, motel
 - Office
 - Recreation uses – Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools,

etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional)

-Restaurants

-Retail sales not to exceed 40,000 square feet

Proposed – Area M – Commercial and Residential

-All permitted uses in the C-H (Commercial High Intensity) zone district, and as amended

-All permitted uses in the R-H (Residential High Density) zone district, and as amended

-Schools

Proposed – Area N Commercial and Residential

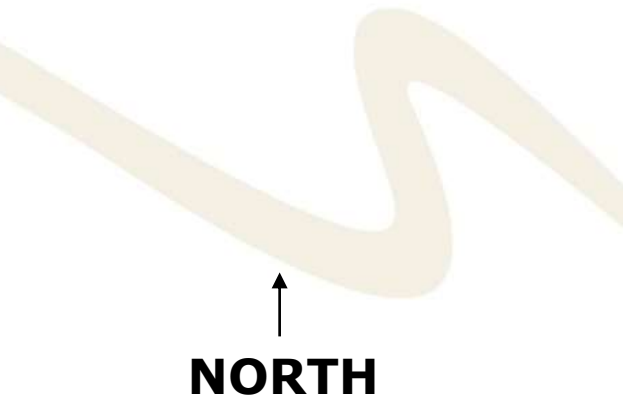
-All permitted uses in the C-H (Commercial High Intensity) zone district, and as amended

-All permitted uses in the R-H (Residential High Density) zone district, and as amended

Promontory Preliminary PUD, Areas M&N, 1st Amendment

Mike Garrott, Planning Manager

Item No. 21.



**Mixed Use Development
Conceptual Master Plan**
memorandum to the Tri-Points Planned Unit Development
Submitted for Westfield Development Company

Zurbriggen, Hoffman

[illegible]

Planned Unit Development Criteria

Fig. 3. *Phylo-PDB* alignment of 1000000-4 as indicated in the first table and corresponding output of the *Phylo-PDB* tool.

Salmonid Lice

Large gaps in knowledge in this field may be compared to the extent identified with the need for the integration of the field in achieving a common culture of learning, and the training opportunities provided, especially in aquatic field work and in observation of the lives of the selected species.

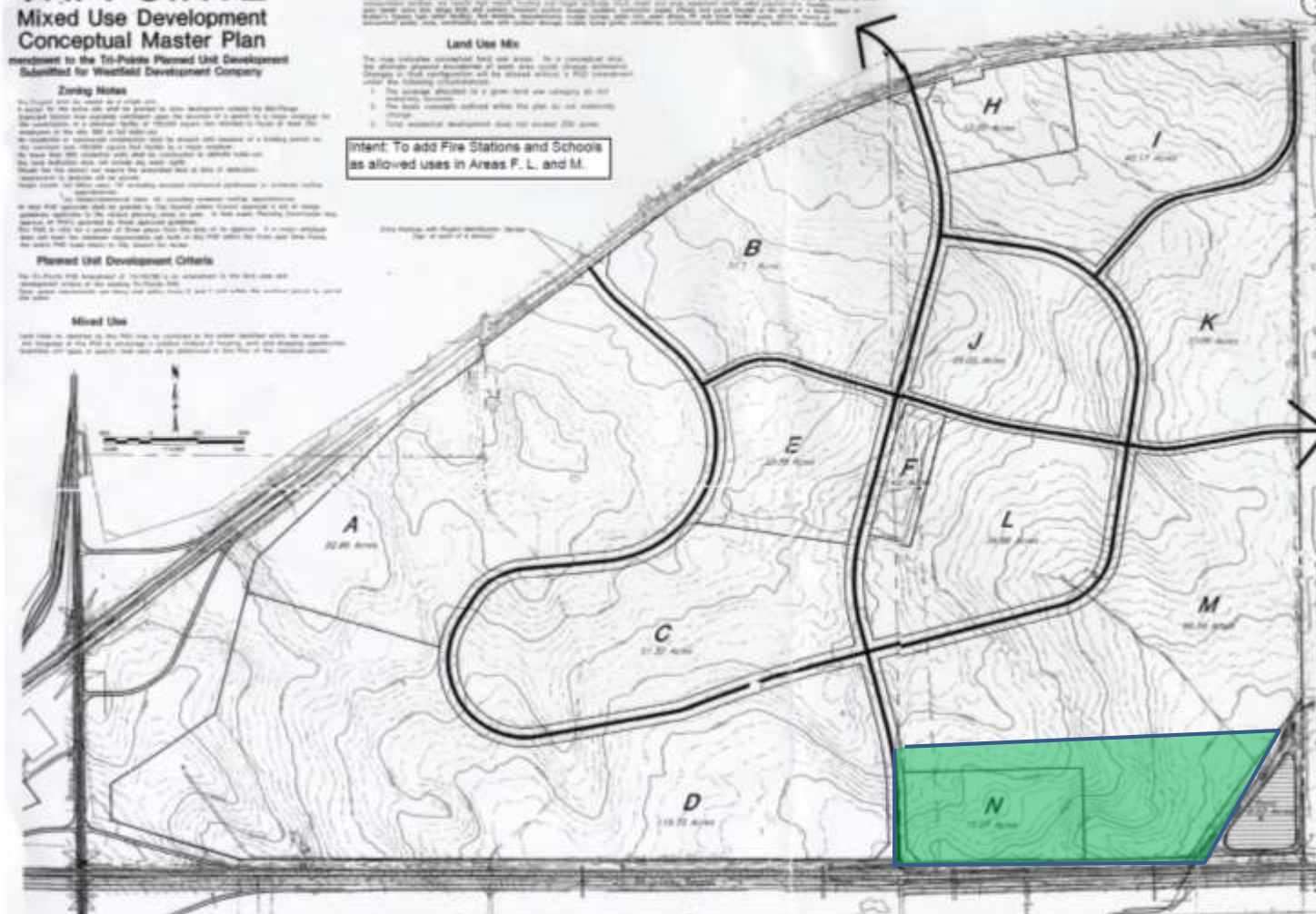
[illegible]

Land Use Mix

- 1) The average allocated to a given field was categorized as not significantly different.
- 2) The basic example outlined within the plot for not statistically change.
- 3) Some examples mentioned above are shown in the figure.

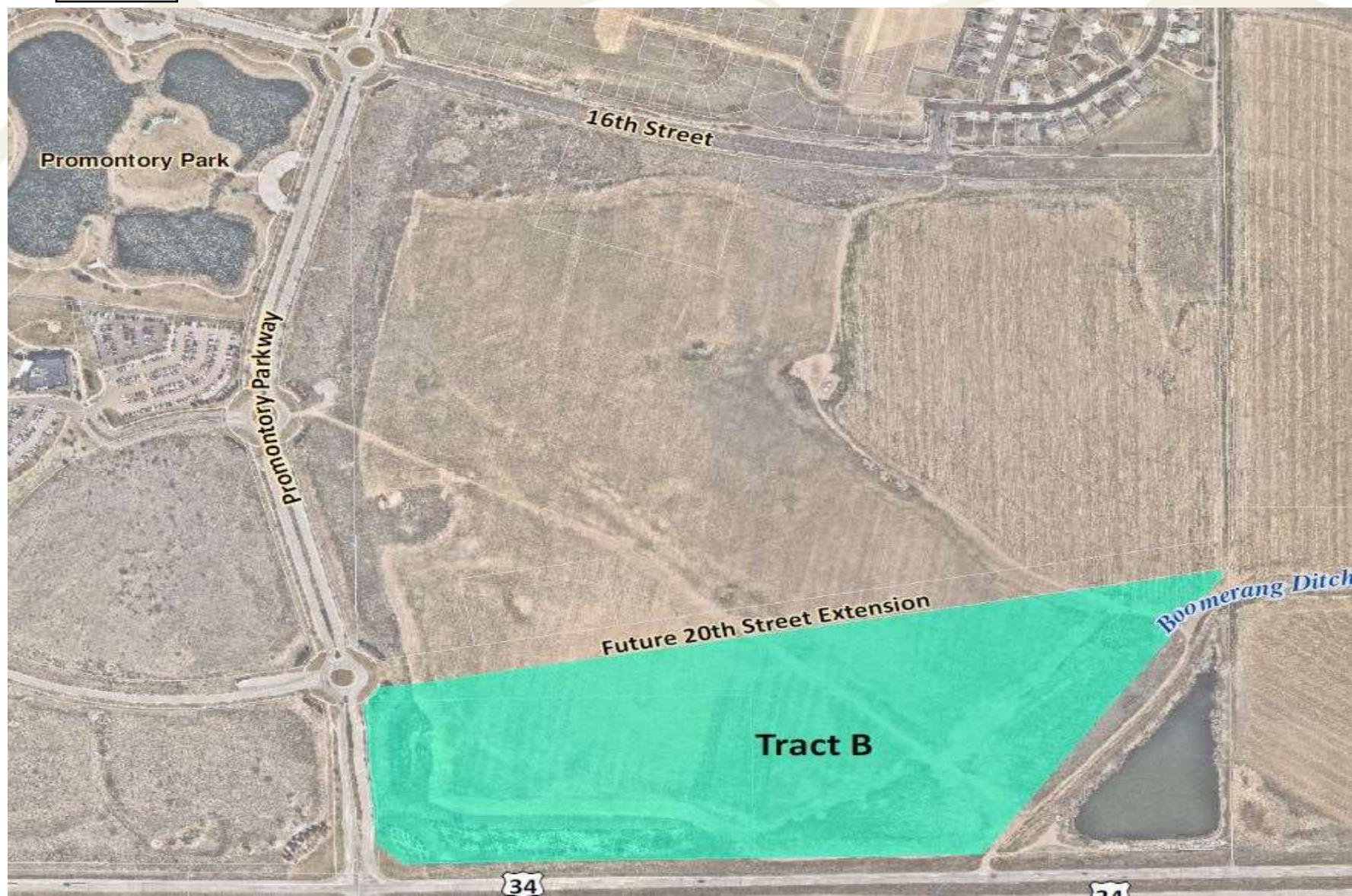
intent: To add Fire Stations and Schools as allowed uses in Areas F, L, and M.

Allowed Land Uses by Type



Attachment C

NORTH



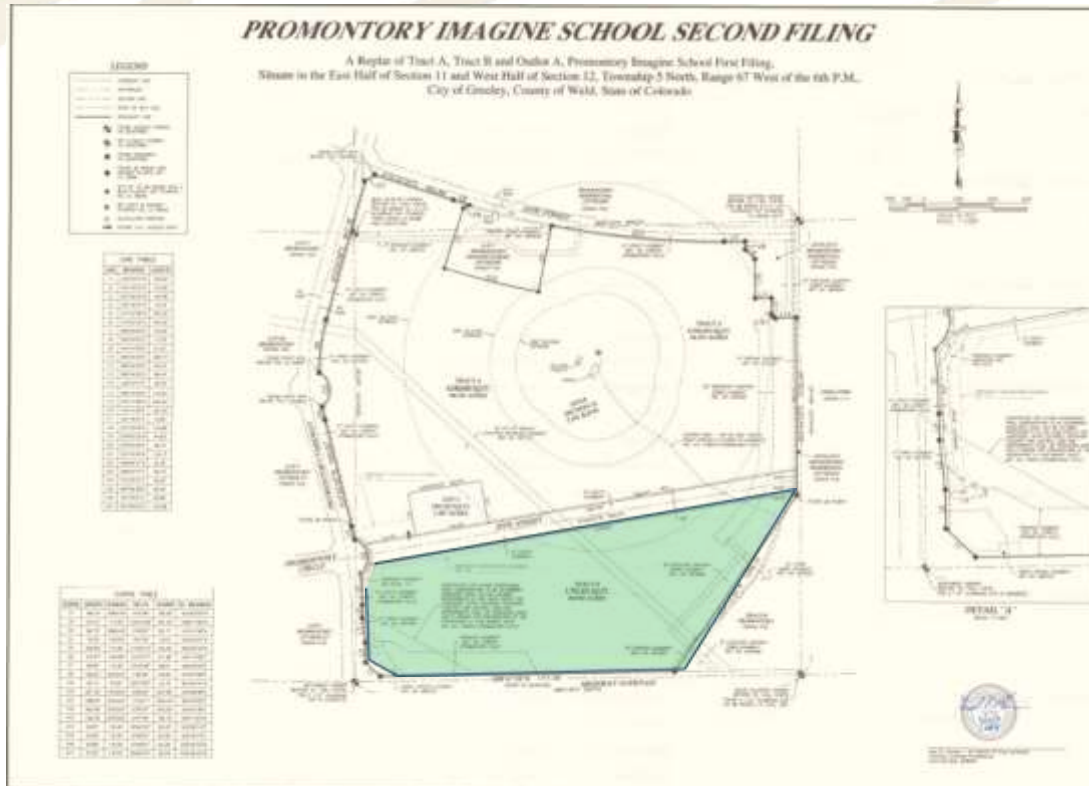
Allowed Uses in Area N

- Animal uses – veterinary clinics (no outdoor runs)
- Art, dance, photo studios, galleries
- Auto uses, car wash
- Banks, savings and loan, financial institutions, ATM's, drive-up windows
- Bars, taverns, nightclubs, lounges
- Bowling alleys
- Brew pub
- Convenience stores with or without gas sales
- Dry cleaning (no cleaning on-site)
- Gas stations
- Gas stations with repair, lube and tire shops
- laundromats
- Personal service shops (beauty, barber, tanning and nail salons, shoe repair, similar
- Pet stores
- Printing, copying shops, mail centers
- Membership clubs, health clubs, marital areas studios
- Restaurants – Cafes, and other eating establishment (including outdoor seating eating areas). Drive up windows
- Retail sales – under 3,000 square feet, 3,000 to 40,000 square feet, large retail (over 40,000 square feet)

Allowed Uses in Area M

- Single family dwellings
- Multi-family dwellings
- Two family dwellings
- Townhouse dwellings
- The following uses, not to exceed 15% of the acreage contained within each Planning area:
 - Banks, savings and loan, financial institutions, ATM's, drive-up windows
 - Medical and dental offices and clinics
 - Hotel, motel
 - Office
 - Recreation uses – Community recreation buildings, indoor, outdoor extensive (skating rinks, bowling alleys, video arcades, tennis courts, swimming pools, etc.), membership clubs, health clubs, open space, parks (pocket), park (neighborhood), park (community / regional)
 - Restaurants
 - Retail sales not to exceed 40,000 square feet
 - Fire Stations, schools, recreation uses – Added 9/17/2019*

Request



- **Rezone Tract B – Areas M and N only**
- **Allow all C-H (Commercial High Intensity) and R-H (Residential High Density) uses**
- **Remove commercial acreage cap**
- **Tract B only, Tract A not included in the rezone request**

Item No. 21.

View from site to
looking northwest



Site Photos

View from
north looking
south



Item No. 21.

View from 20th
Street looking
north and east

Site Photos



View from 20th
Street looking
south



Item No. 21.

Yes a. Has the area changed to such a degree that it is in the public interest to rezone the property to encourage development?

➤ **The subject properties undeveloped for over 22 years; the applicant has stated that the limitation of land use options has impacted the developability of the lots.**

Yes b. Has the zoning been in place for at least 15 years and does the zoning appear to be obsolete?

➤ **The subject site has been zoned for nearly 22 years, without any development. The current zoning is not obsolete. Adding uses would provide further development opportunities.**

N/A c. Are there clerical errors?

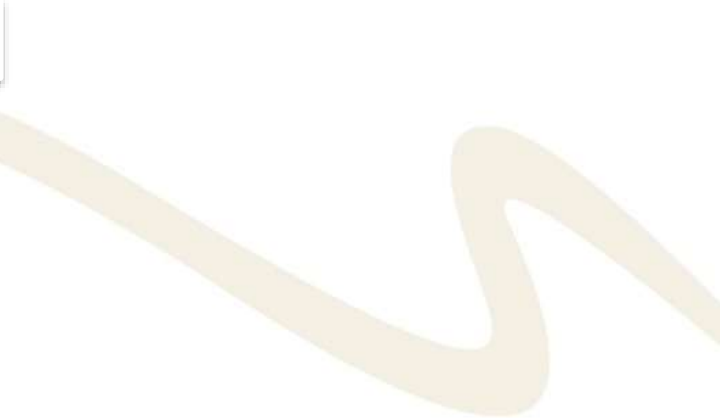
➤ **There are no clerical or technical errors to correct.**

N/A ➤ d. Are there detrimental environmental conditions?

➤ **There are no known detrimental environmental conditions.**

N/A e. Is the rezoning necessary to provide land for a community related use?

➤ **The rezone request is not necessary to provide land for community related uses.**



Yes **f. What is the potential impact of the rezoning upon the immediate neighborhood and the City as a whole?**

Item No. 21.

- **City services should not be impacted, since the surrounding area is already served by municipal services such as water and sewer. Police and Fire already serve this area.**

Yes **g. Is there clear and convincing evidence that the proposed rezoning will be consistent with the policies and goals of the City's Comprehensive Plan and comply with applicable zoning overlay requirements?**

- **Complies with policies EH2.4, EH4.2 & GC2.5**
- **The proposed additional uses within the PUD would allow potential use(s) to develop within the area of the PUD, which would provide more options, within walking or biking distances for the residents.**

Yes **h. Impact on approved Zoning Suitability Plan?**

- **The existing Zoning Suitability Map showed that the property can be developed in accordance with the Development Code Standards.**

Development Code Criteria: (Section 24-663)

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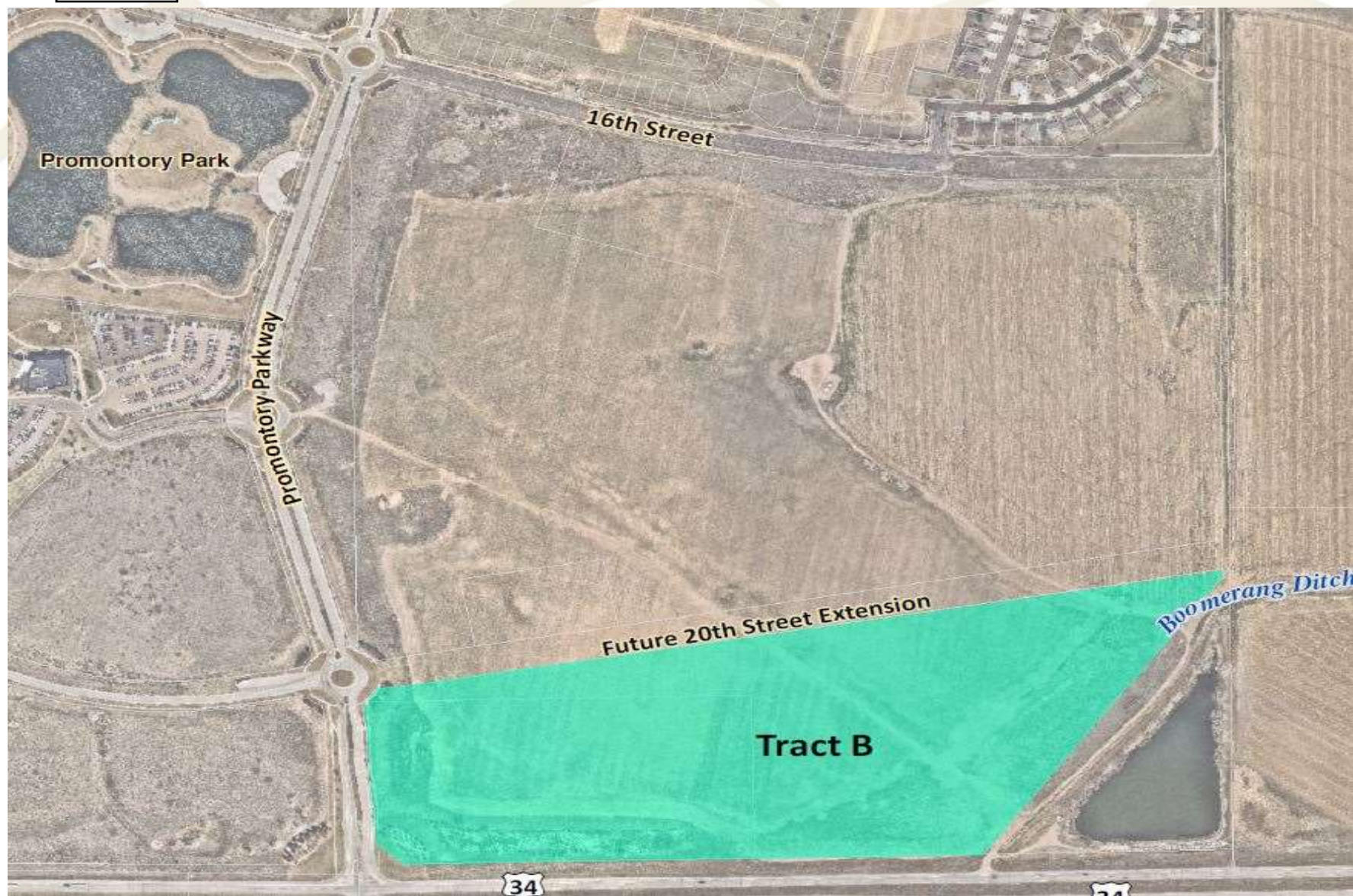
Yes	Area Requirements: minimum size of 2 acres
	• The site contains 40.92 acres
Yes	Is the proposed Preliminary PUD Consistent with the Land Use Chapter of the Comprehensive Plan
	• Complies with policies EH2.4, EH4.2 & GC2.5 • The proposed additional uses within the PUD would allow potential use(s) to develop within the area of the PUD, which would provide more options, within walking or biking distances for the residents.

Notice & Feedback

- **Notice letters were mailed to 7 property owners within 500 feet of site**
- **Sign was posted on the site & newspaper notice was published**
- **No citizen input received**

RECOMMENDATION

- **Planning Commission recommends approval of the
Rezone Request**



Council Agenda Summary

Key Staff Contact: Brad Mueller, Community Development Director, 970-350-9786

Carol Kuhn, Chief Planner, 970-350-9276

Mike Garrott, Planning Manager, 970-350-9784

Title:

Public hearing for an ordinance amending Title 24 of the Greeley Municipal Code relating to the Development Code by deleting the current Title in its entirety and adding a new Chapter 1 relating to General Provisions and a new Chapter 2 relating to Procedures

Summary:

The Community Development Department is undertaking a multi-year project to update the Development Code, with an anticipated final adoption in September of 2021. The last major update to the Development Code was in 1998. A Plan Conformance Report was prepared and used as a guide to determine areas where the code could be improved to conform to the Comprehensive Plan and other policy documents; staff reviewed this report with a citizen Advisory Committee, Planning Commission, and City Council.

Staff is bringing forward the first two chapters in the overall code update, Chapters 1 and 2. As detailed below, two remaining portions of the code will be brought for public hearing in July and August. The 2nd Reading in September is intended to then formally bring the three portions together, but without re-opening the public hearings or soliciting additional public comment.

Changes are discussed in detail in the attached Staff Report, particularly in the "Section Maps," which explain the purpose for re-organization in the manner proposed, as well as rationale for simplifying, conforming to existing law, or implementing policies found in the Comprehensive Plan and other city documents.

More generally, updates to the two chapters are as follows:

Chapter 1 – General Provisions, discusses the relationship of the Development Code to the City's Comprehensive Plan and other plans and studies, provides the overall administration and enforcement of the code, includes a methodology to interpreting the Development Code, specifies methods for handling non-conforming uses, structures, and lots, and includes the following sections:

- Chapter 1 – General Provisions

 - Section 24-101 Overview

 - Section 24-102 Interpretation

 - Section 24-103 Administration

 - Section 24-104 Enforcement

 - Section 24-105 Nonconformities

Chapter 2 – Procedures, defines the City's procedures for processing land use applications and includes these key provisions:

- The addition of a Procedures Summary Table;
- A new requirement for Preliminary Plats to be approved through a public hearing, rather than a public meeting;
- Clarifications regarding processing concurrent applications;
- Modifications to public notice procedures;
- Clarifications between various types of minor subdivision applications;
- The addition of a Condominium Plat process;
- The separation of platting from Planned Unit Development (PUD) applications;
- Simplification of PUD process – now one step, rather than two;
- Clarification regarding the required plan elements of a PUD;
- The addition of criteria for minor PUD amendments;
- Clarification regarding review criteria for Alternative Compliance, with approval of Alternative Compliance being moved to an administrative decision with a call-up provision;
- Removal of Design Review Applications;
- Revisions to require variances to meet all criteria, rather than some; and
- Revisions to minor variance thresholds.

Specifically, Chapter 2 includes revisions and updates to the various application types and processes and includes the following sections:

Chapter 2 - Procedures

- 24-201 General – All Applications
- 24-202 Minor Subdivision
- 24-203 Major Subdivision
- 24-204 Rezoning
- 24-205 Planned Unit Development
- 24-206 Use by Special Review
- 24-207 Site Plan
- 24-208 Alternative Compliance
- 24-209 Variance
- 24-210 Appeals of Administrative Decision
- 24-211 Code Amendments
- 24-212 Vacation & Dedication of Easements
- 24-213 Vacation & Dedication of Right-of-way
- 24-214 Annexation

On March 23, 2021 and April 27, 2021, Staff conducted worksessions with the Planning Commission regarding the proposed revisions for Chapters 1 and 2 and presented Planning Commission with draft code language during the worksessions. On April 13, 2021, Staff conducted a worksession with City Council to highlight the proposed revisions to Chapters 1 & 2. On May 18, 2021, the Planning Commission recommended Council adopt Chapters 1 and 2, with a vote of 7-0. No members of the public spoke during the public hearing portion of the meeting.

The proposed schedule for the adoption of the Development Code is as follows:

Track	Chapter(s)	PC Worksession	PC Hearing	CC Public Hearings
Track I - Non-substantive changes for organization and improved usability.	Ch 1 – General Provisions	March 23, 2021	April 13, 2021	June 1, 2021 (First Reading)
	Ch 2 - Procedures	April 27, 2021	May 18, 2021	June 15, 2021 (Public Hearing) September 21, 2021 (2 nd Reading - Final Adoption)
Track II - Non-policy technical changes and coordination with other City policies and documents.	Ch 7 – Access & Parking Ch 8 – Landscape & Site Design Standards Ch 9 – Signs Ch 10 – Special Purpose Districts & Areas Ch 11 – Supplemental Standards Ch 12 – Reserved for Metropolitan Districts	May 25, 2021	June 8, 2021	July 6, 2021 (First Reading) July 20, 2021 (Public Hearing) September 21, 2021 (2 nd Reading - Final Adoption)
Track III - Substantive changes called for in the Comprehensive Plan, Strategic Housing Plan, and Council's 3-Year Priorities that need broader input and direction from the Advisory Committee, Planning Commission, and City Council.	Ch 3 – Subdivision Standards Ch 4 – Zoning Districts & Uses Ch 5 – Neighborhood Development & Design Standards Ch 6 – Non-residential Development Standards Ch 13 – Definitions	June 22, 2021	July 27, 2021	August 3, 2021 (First Reading) August 17, 2021 (Public Hearing) September 21, 2021 (2 nd Reading - Final Adoption)

Staff has provided a section map for Chapters 1 and 2 (Attachments B & D of the Staff Report) which outline the various sections in the existing Title 18 (recodified as Title 24).

Staff is anticipating an effective date of October 1, 2021.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	No
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

Consideration of this matter is a legislative process.

Other Issues and Considerations:

None

Strategic Work Program Item or Applicable Council Priority and Goal:

The Development Code Update project relates to a number of Council Priorities and Goals:

Image: Reinforce Greeley's vision as an attractive and vibrant community in which to live, learn, work and play. The revised code will create opportunities to reinforce the City's vision as an attractive and vibrant community by modernizing, streamlining, and simplifying the Development Code requirements. The revised code language is designed to provide tables, charts, graphics, and clear intent statements to make the code easier to navigate and will be written in clear, simplified language.

Safety: Manage the health, safety and welfare in a way that promotes a sense of security and well-being for residents, businesses and visitors. The first zoning regulations in the United States were developed to protect health, safety, and welfare. This update to the City's development code continues this original intent, by setting standards for well-designed streets, water and sewer systems, neighborhoods, parks, trails, open space, and floodplains.

Economic Health & Development: Foster and maintain public and private investment in business development. Throughout the code update process, staff has worked with an Advisory Committee comprised of members from the development community, businesses, homebuilders, and citizens, as well as the Planning Commission, to draft regulations that create a streamlined, clear, and predictable development process.

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community. The revised regulations have been developed to support Council's 3-Year Priorities, the Strategic Housing Plan, and the Imagine Greeley Comprehensive Plan. The proposed regulations will encourage a variety of housing options, mixed-use development options, and walkable, human-scale development to help keep Greeley competitive with neighboring jurisdictions.

Decision Options:

- 1) Direct staff to bring the ordinance for a second reading; or
- 2) Direct staff to amend the ordinance and bring the amended ordinance for a second reading; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to direct staff to bring back the ordinance as presented for a second reading on September 21, 2021.

Attachments:

Draft Ordinance for Adoption of Chapters 1 & 2

Planning Commission Staff Report

 Draft of Chapter 1 – General Provisions

 Section Map for Chapter 1

 Draft of Chapter 2 - Procedures

 Section Map for Chapter 2

Planning Commission Minutes – PC Hearing – May 18, 2021

PowerPoint Presentation

**CITY OF GREELEY, COLORADO
ORDINANCE NO. ____, 2021**

AN ORDINANCE AMENDING TITLE 24 OF THE GREELEY MUNICIPAL CODE RELATING TO THE DEVELOPMENT CODE BY DELETING THE CURRENT TITLE IN ITS ENTIRETY AND ADDING A NEW CHAPTER 1 RELATING TO GENERAL PROVISIONS AND A NEW CHAPTER 2 RELATING TO PROCEDURES.

WHEREAS, it becomes necessary to update the Greeley Municipal Code from time to time to adopt zoning codes and development standards that continue to align with public values and Council priorities; and,

WHEREAS, amending the Development Code in this manner will update those elements of the Code relative to such court cases and provide for the public interest and further protect the health, safety and welfare of City residents; and,

WHEREAS, the Planning Commission conducted a public hearing to review and consider the proposed changes on May 18, 2021, and recommended their adoption by City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. That the current Title 24 of the Greeley Municipal Code be and hereby is repealed.

Section 2. That the Greeley Municipal Code be amended by adding thereto a new Chapter 1 of Title 24 to read as shown in Appendix A.

Section 3. That the Greeley Municipal Code be amended by adding thereto a new Chapter 2 of Title 24 to read as shown in Appendix A.

Section 4. This ordinance shall become effective on October 1, 2021.

PASSED AND ADOPTED, SIGNED AND APPROVED, THIS ____ DAY OF _____, 2021.

ATTEST:

CITY OF GREELEY

City Clerk

Mayor

Appendix A

AN ORDINANCE AMENDING TITLE 24 OF THE GREELEY MUNICIPAL CODE RELATING TO DEVELOPMENT CODE BY DELETING THE CURRENT TITLE IN ITS ENTIRETY AND ADDING A NEW CHAPTER 1 RELATING TO GENERAL PROVISIONS AND CHAPTER 2 RELATING TO PROCEDURES.

Section 1. Title 24 of the Greeley Municipal Code is hereby repealed in its entirety.

Section 2. The Greeley Municipal Code shall be amended by adding thereto a new Chapter 1 – General Provisions in Title 24 to read as follows:

Chapter 1. General Provisions

Section 24-101	Overview
Section 24-102	Interpretation
Section 24-103	Administration
Section 24-104	Enforcement
Section 24-105	Nonconformities

24-101 Overview

- a. **Title.** This Title 18 is known as the Greeley Development Code. References to “this code,” “the development code,” or “these regulations” shall be considered a reference to the Greeley Development Code.
- b. **Authority.** The development code is enacted pursuant to the purposes and authority granted by Article XX of the Colorado Constitution and the Greeley Charter, independent of and in addition to the Colorado Revised Statutes, Title 31, Article 23 Planning and Zoning. This Title also supersedes any state legislative enactments which are, by their terms, subject to being superseded by adopted home rule city charters or ordinances.
- c. **Jurisdiction.** The Greeley Development Code applies to all structures and land within the incorporated area of the City of Greeley, as depicted on the official zoning map, and other maps accompanying the City’s plans and policies. It shall be unlawful to conduct any development or use of land until all specified development review processes have been followed, all applicable standards have been fulfilled, and all required approvals, permits or other authorizations have been issued.
- d. **Purposes.** This development code is adopted to promote the public safety, health, and general welfare for the City of Greeley and its citizens and businesses. Specifically, the regulations have the following purposes:
 1. Implement the Comprehensive Plan, and other plans and programs authorized under the guidance of the Comprehensive Plan.

2. Promote the physical, social, and economic well-being of residents and businesses, the long-term value and viability of public investments, and individual property values by balancing the co-equal rights of property owners.
 3. Invest public funds effectively and efficiently, and in a manner that creates lasting value for the community.
 4. Promote planning and urban design that emphasizes distinct places and unique elements of community character throughout Greeley.
 5. Provide parks, trails, and civic spaces that help organize development around systems of connected open spaces and emphasize significant natural landscapes
 6. Secure proper arrangement and design of streets to shape efficient development patterns, coordinate with existing and planned streets, create multi-modal networks, improve access and circulation, and support abutting land uses.
 7. Divide the city into zones and districts that promote the character and development patterns of distinct places identified in the Comprehensive Plan.
 8. Regulate and restrict the development and use of buildings and land within each zoning district to create a compatible scale and range of building types within districts, and to promote the appropriate transitions to adjacent property and to supporting districts.
 9. Provide a variety of housing opportunities for all residents and citizens.
 10. Secure adequate provisions for transportation, water, drainage, sanitary sewer facilities, utilities, and other public improvements in coordination with development.
 11. Protect the natural environment and conserve environmentally sensitive lands by directing new development into areas with few natural or environmental constraints and mitigating adverse impacts when developing in sensitive areas.
 12. Allow for the removal of minerals prior to development.
 13. Ensure fair consideration of development applications through clear and consistent procedures.
 14. Provide for coordinated development of Greeley consistent with established policies of the City.
- e. **Severability.**
1. If any court of competent and final jurisdiction declares any part of this development code to be invalid, that ruling shall not affect any other provisions of this development code not specifically included in that ruling.
 2. If any court of competent and final jurisdiction declares that the application of this development code to a particular property or structure is invalid, that ruling shall not affect the application of the regulations to any other property or structure, or to development with different circumstances.
 3. No provision of this code shall enable any circumstance that is unlawful under superseding federal or state law. If any section, subsection, sentence, clause, phrase, or

portion of this code is now or in the future superseded or preempted by state or federal law, or found by a court of competent jurisdiction to be unauthorized, such provision shall be interpreted and applied as required by law.

f. **Transition Provisions.** This section shall be used to guide the transition from previously existing regulations. Unless specifically stated otherwise in this code, the following rules shall apply:

1. **Generally.** All standards in this code shall apply after the effective date of the ordinance adopting these standards, and all subsequent amendments shall become effective in the same manner.
2. **Applications.** Any official application submitted prior to the effective date of the ordinance adopting these standards, and determined a complete application by the Director, shall be reviewed and processed according to the prior standards and procedures. An application submitted prior to the effective date, but determined incomplete, shall be resubmitted and processed according to the regulations in effect at the time of submittal of a complete application.
3. **Prior Approvals.** All permits, site plans, or other approvals issued under an administrative capacity prior to the effective date of this code shall remain effective for the duration specified with that approval or under the prior code as it existed on **[effective date October 1, 2021.]**. If no date is specified, the duration of the most applicable approval under this code shall be used. Any changes or amendments to a prior approval requested after the effective date of this code shall be subject to all provisions of this code.
4. **Plats.** Any approved preliminary plat may continue to advance to final plat according to the standards, procedures and time limits of the prior code. Each subsequent approval of a final plat for a phased project may renew the validity of that preliminary plat for the duration specified in Section 24-203. However, a new preliminary plat shall be required subject to all provisions if:
 - (a) The preliminary plat expires under the conditions of the prior approval or the duration specified for preliminary plats in Section 24-203, whichever is sooner.
 - (b) A major amendment is proposed to the preliminary plat.
 - (c) Any final plat proposes a substantial change to the preliminary plat.
 Final plats submitted after the effective date of this code shall meet all provisions of this code, to the extent it is consistent with the approved preliminary plat.
5. **Continuation of Enforcement.** Any violations of a previously valid regulation that continues after adoption of this code may be enforced as provided by this code. The City may, in its discretion enforce either the previous regulation or the standards of this Code.

24-102 Interpretation

- a. **Rules of Construction.** The following rules shall apply to the application and interpretation of these regulations, unless the context clearly indicates otherwise:
1. All words shall have the customary dictionary meaning, unless specifically defined in these regulations.
 2. The present tense includes the future tense and the future tense includes the present tense.
 3. The singular includes the plural and the plural includes the singular.
 4. Lists of examples prefaced by “including the following,” “such as,” or other similar clauses shall not be construed as exclusive or exhaustive, and shall not preclude an interpretation of the list to include other similar and non-mentioned examples.

5. The conjunctive “and” in a list means that all apply; the conjunctives “or” and “and/or” mean the provisions may apply singly or in any combination; and the conjunctive “either...or” means the provisions apply singly but not in combinations.
 6. When calculations to determine a requirement results in fraction of physical elements that cannot be divided (i.e. parking space, trees, dwelling units), it shall be rounded up to the nearest whole number if the standard is expressed as a minimum requirement and rounded down to the nearest whole number if the standard is expressed as a maximum allowance.
 7. “Shall,” “will,” or “must” is mandatory; “should” or “may” is permissive but recommended as a way to best meet the standard or achieve the intent of the standard.
 8. A reference to an administrative official shall refer to that official, or his or her designee, and all references to specific city officials may also include any other designee of the City Manager.
 9. Any reference to other official local, state, or federal government rules or regulations shall include the current versions of those regulations, provided they remain binding on the City, or where not binding, provided they remain consistent with the purposes, intent, and objectives included in these regulations.
 10. References to a person shall include individual, partnership, association, agency, corporation or other legal entity and the owners, tenants, occupants, principals, partners, officers, employees, agents and representatives of any legal entity.
- b. **Conflicts.** All provisions of this code shall be considered the minimum requirements to promote the public health, safety, and welfare. In case of a conflict between these regulations and any other adopted rule, regulation, or code, the higher and more restrictive standard shall apply. In making a determination of which standard is higher and more restrictive, the official may consider which is more specific; which is more recent; which is more consistent with the Comprehensive Plan; which is more consistent with the purposes, intent, and objectives of these regulations; and which best promotes the public health, safety, and welfare.
- c. **Computations of Time.** The following rules apply to any computation of time, unless a specific section of these regulations indicates otherwise:
1. The day of the act that commences a time period shall not be counted; for notice requirements the day of the hearing shall not be counted.
 2. The last day of the time period shall be included, unless it is a Saturday, Sunday or legal city holiday, in which case the next working day shall end the time period. In all other cases Saturday, Sunday or legal city holidays count in the time period.
 3. Whenever any time period is expressed for a formal submittal to the City, the time period shall end at midnight on the last day of that time period.
 4. Any time period expressed in years shall include a full calendar year from the act that commences the time period.
- d. **Interpretation of Zoning Map.** Where uncertainty exists with respect to any boundary on the zoning district map, the following rules shall apply:
1. Boundaries approximately following streets or other rights of way or rivers or streams - the centerlines or extension of these centerlines shall be the boundaries.
 2. Boundaries indicated as approximately following property lines - the platted or other official legal line of that property shall be the boundaries, unless the property boundaries on the map have been substantially altered.
 3. Boundaries approximately following city limits shall be interpreted as following the actual city limits.
 4. Boundaries that split any platted lots - the lot shall be interpreted in the district designated to the majority of the lot. In the case of an equal split, the Director shall determine the

appropriate zoning based on consideration of the Comprehensive Plan, the context, the surrounding existing uses, and the likelihood of change in context or existing uses in the future.

5. Boundaries that split any unplatted property - any future platting of property may generally follow the zoning boundary and then each resulting property may assume the zoning applicable to the majority of the resulting lot actual platted boundary, or where any resulting lots have significant discrepancies with zoning boundaries, rezoning may be required.
 6. Boundaries following a shoreline shall be interpreted to follow the shorelines and in the event of change in the shoreline, shall move with the actual shoreline.
- e. **Non-regulatory Provisions.** Intent statements, design objectives, graphics, and commentary such as captions to graphics or notes in tables, are an aid to interpretation of the standards and criteria. In the event of any conflict between the intent statements, design objectives, graphics or commentary and a specific standard, the specific standard shall control.
- f. **Resources, Guides and Industry Standards.** Resources, guides, and industry standards that are recognized as a reputable authority in the planning, development, and urban design professions, may be used to supplement interpretation of this code. The Director shall make a determination on the applicability of a resource, guide or industry standard to a particular circumstance. These guides shall only be used to the extent that it clarifies or is more specific than the standards, and is consistent with the purposes, intent, and design objectives expressed in these regulations. These guides shall not be used to otherwise change or conflict with any specific standard in these regulations.
- g. **Official Interpretations.** In cases where there is uncertainty how this code applies to potentially recurring situations, the Director may make Official Interpretations.
1. **Filing.** Official Interpretations shall be documented and kept on file with the Community Development Department, or otherwise made accessible to applicants facing similar circumstances.
 2. **Criteria.** In making an Official Interpretation, the Director shall use the following criteria:
 - (a) Sound professional planning and urban design principles.
 - (b) The Comprehensive Plan and any specific plans or policies created under the Comprehensive Plan.
 - (c) The purposes, intent, or design objectives applicable to this code and the specific chapter or sections related to the interpretation.
 - (d) Any resources, guides, or industry standards applicable to the specific situation.
 - (e) Based on the context of the street, block, site, or building, the interpretation is at least one reasonable way the standards could be applied.
 - (f) Whether the same interpretation could be applied to all similarly situated property or circumstances, and meet these criteria; or whether any conditions or limitations are necessary to ensure it meets the criteria.
 3. **Effect of Decision.** An approved Official Interpretation shall be effective upon approval by the Director and may apply to all similar situations unless:
 - (a) It is overruled or modified by a different Official Interpretation.
 - (b) It is overruled by appeal as provided in these regulations.
 - (c) It is amended or overruled by a text amendment to the section addressed by the statement.

24-103 Administration

- a. **Staff.** The following city staff positions are responsible for administering specific aspects of this code.
 1. **Community Development Director.** The Community Development Director (Director) is responsible for administration of the development code, and is the principal interpretation and enforcement official of these regulations. The Director may consult with any other department or relevant outside agencies in order to coordinate any plans, policies, and programs that impact the Comprehensive Plan. The Director shall specifically:
 - (a) Prepare and provide development application forms and administer the requirements and review of submittals;
 - (b) Oversee the application, review, and administration processes and prepare presentations and reports for review bodies;
 - (c) Issue official interpretations and approve the use of other resources, guides, and industry standards used in administering this code.
 - (d) Make all final interpretations and any final administrative decision referred to the Director under the procedures and standards of these regulations.
 2. **City Manager and Other Staff.** The City Manager is the chief executive and administrative officer for the City and may make any decision delegated to any city staff member under this code. All other department heads and staff may serve in an advisory role to the Community Development Director under this code, as designated by the City Manager.
- c. **Planning Commission.** The Planning Commission is the appointed body of the City responsible for all long-range and comprehensive planning, as well as review, recommendations and decisions on implementation of the Comprehensive Plan. The Planning Commission is established according to Section 19-1 of the Greeley City Charter. In addition to all other general planning authority granted by the Charter, statutes, local ordinances, the Planning Commission shall have the specific review responsibilities and final administrative decisions referred to the Planning Commission under the procedures and standards of these regulations.
- d. **City Council.** The City Council is the elected and governing body of the City responsible for all legislative decisions that affect implementation of the Comprehensive Plan. In addition to other general authority granted by law, the City Council shall have the appeal authority and final decision authority referred to the City Council under the procedures and standards of these regulations.
- e. **Zoning Board of Appeals.** In accordance with Article XIX of the City Charter, the City Council appoints the Planning Commission as the Zoning Board of Appeals. The Zoning Board of Appeals shall act in accordance with same rules and procedures as the Planning Commission but have the following specific authority under this code:
 1. Grant variances to the strict application of the standards in this code;
 2. Hear and decide appeals when an error is alleged in any final order or determination made by an administrative official in the interpretation or enforcement of this code;
 3. Consider any other matters referred to it under this code; and
 4. Otherwise act as the City's board of adjustments under the authority of C.R.S. 31-23-307.
- f. **Historic Preservation Commission.** The Historic Preservation Commission is established to have principal responsibility for matters of historic preservation, as specifically outlined in Section 10.03.

1. **Membership.** The City Council may appoint the Historic Preservation Commission. The commission shall consist of 7 members. The make-up of the Commission shall be:
 - (a) One architect, landscape architect, design professional and/or licensed contractor or building tradesperson;
 - (b) One historian, archeologist and/or architectural historian;
 - (c) One licensed real estate broker; and
 - (d) Four citizens at-large.
2. **Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:
 - (a) Recommend criteria and procedures for historic designation, recommend designation, or removal of specific properties or districts, and review proposals that impact designated properties as provided in Section 24-1004.
 - (b) Oversee surveys that document structures and assess conditions of potential historic properties and areas, and inform landowners of properties that may meet criteria for designation.
 - (c) Review and make a decision on any application for altering, moving, or demolishing any designated properties.
 - (d) Advise and assist owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation, and reuse, including nomination to the National Register of Historic Places.
 - (e) Develop and assist in public education programs, such as walking tours, brochures, and a marker program for historic properties, lectures, and conferences.
 - (f.) Advise the City Council on matters related to preserving the historic character of the city.
 - (g) Assist in pursuing financial assistance for preservation-related programs.
 - (h) Advise appropriate city departments on violations, enforcement and administration of Section 24-1004, Historic Preservation.

24-104 Enforcement

- a. **Violations.** It shall be unlawful for any building, structure, site element or use of land to be constructed, altered, maintained, or otherwise initiated in violation of these regulations. It shall be unlawful for any person to do or cause:
 1. Any act or thing prohibited by these regulations;
 2. Omit any act or thing required by these regulations; and
 3. Interfere in any manner with persons in performance of a right or duty granted or imposed by these regulations, maintained, or otherwise initiated in violation of these regulations.
- b. **Enforcement.** The City may investigate and initiate proper actions or proceedings to prevent or terminate any activity or condition that is in violation of these regulations, including withholding any permits or licenses, revoking or suspending any permits or licenses previously granted, issuing stop work orders, preventing the sale or lease of property, correcting or abating the nuisance, withholding any public improvements, or penalizing and initiating legal proceedings to prevent the continuance of unlawful actions or conditions.
- c. **Penalty.** Any and all violations of the provisions of this code shall be a code infraction and shall be subject to the sanctions for code infractions contained in Chapter 1.33 of the Greeley Municipal Code, and any other sanctions permitted under law. The City may seek and obtain remedies provided by law, including civil and administrative sanctions, temporary or permanent injunctive relief, and any other relief set forth in Chapter 1.33 of the Greeley Municipal Code.

24-105 Nonconformities

- a. **Intent.** The general policy of the City is to allow uses, buildings and lots that were created legally and in conformance with then-applicable requirements, but that do not conform to the current applicable requirements of these regulations, to continue to be put to productive use. However, it is the City's intent to bring as many aspects of these nonconformities into compliance with current regulations as is reasonably practical. The intent of this section is to balance the interests of property owners in past investments, discourage investment that expands or reinforces non-conforming situations, and promote investment consistent with the Comprehensive Plan and these regulations.
- b. **Nonconforming Uses.** Uses that were legally initiated prior to the adoption or amendment of this code, but which could not be established under the current terms of this code, may continue to exist subject to the following:
 1. The use shall not be expanded beyond any specific area of the site or lot where it was legally established, beyond any existing building or structure, or within any building or structure where any structural changes expand the exterior footprint of the building or structure. The Director may consider an exception based on the following findings:
 - (a) The enlargement of the structure or buildings is only to facilitate a conforming uses or activities, and does not otherwise allow, encourage or promote expansion or increase impacts of the nonconforming use;
 - (b) The enlargement of the structure or buildings shall not result in conversion of the nonconforming use from a seasonal to a year-round operation or otherwise expand the time of operations; and
 - (c) The enlargement of the structure or buildings complies with all applicable development standards.
 2. If the use is reduced in intensity or abandoned for a period of twelve consecutive months, the property may not be used except at that lower intensity or as a conforming use.
 3. Any change of use shall be to a conforming use, and at this time the nonconforming use shall be abandoned. The Director may authorize a change to a lesser non-conforming use considering the extent, intensity, or operations of the use, provided it lessens impacts on adjacent property and it does not otherwise include investments that extend the period that the property is not conforming to this code.
 4. Any structure in which a non-conforming use is carried on that is damaged to the extent of more than 50% of the replacement value shall not be restored to support the non-conforming use.
 5. Any new activity that triggers specific site design standards shall require full compliance with that site design standard in order for the nonconforming use to continue, and the presence of a non-conforming use shall not be used to justify noncompliance with other applicable standards.
 6. A detached house used as a single-family dwelling in any district that does not permit single-family dwellings, may be enlarged, as long as the lot and building comply with all other base standards applicable to a similar building type.
- c. **Nonconforming Structures.** Structures that were legally constructed prior to the adoption or amendment of this code, but which could not be constructed under the current terms of this code,

may continue to exist subject to the following standards. This Section shall not apply to signs, which shall address non-conforming situations as provided in Chapter 9.

1. Rehabilitation or expansion of the structure that increases the degree of nonconformity is prohibited. Other rehabilitation or expansions may occur provided that they comply with all other requirements of this code; are not detrimental to the purposes, intent and objectives of the standards; and do not negatively impact development in conformance with this code on adjacent property. In general, no repairs or alterations that cost more than 50% of the replacement value of the structure shall be permitted. The burden shall be on the applicant to produce evidence that the cost of the repair or alteration is less than 50% of the replacement value.
 2. If damaged by 50% or less of its total replacement cost, the structure may be restored to its original condition if work obtains a permit and work is commenced within 180 days, and work is completed prior to expiration of the permit.
 3. If the structure is determined obsolete or substandard by virtue of any applicable code beyond this chapter, and the applicant fails in their burden of proof that the cost of improvement or restoration is less than 50% of the replacement value, then the right to maintain the nonconformity shall terminate.
 4. Structures granted variances from the dimensional standards are not considered nonconforming and are not subject to the limitations of this section, provided that there are no changes beyond the limits, conditions, or extent of the approved variance.
- d. **Nonconforming Site Conditions.** Any site condition associated with a conforming use or structure (such as parking, landscape, open space, or other non-building site characteristic) in existence prior to these regulations, but which are not compliant with the standards of these regulations, may continue to exist subject to the following:
1. Any change of use or expansion of use shall require compliance with the new site standards up to the maximum extent practical, considering the extent of area being impacted by work to support the new or expanded use.
 2. Any site development activity on a portion of a site shall require compliance with the new standards on that portion of the site or proportionate to area that is subject to the development activity. For example, a site that is not compliant with the landscape standards must meet the landscape standards prorated to the portion of the site where development activity occurs, but the remainder of the site may remain nonconforming. If more than more than 50% of the entire site area is impacted by development activity, the entire site shall be brought into compliance.
 3. Any change of use, building, or site design element that triggers a screening requirement shall require 100% compliance with all screening standards applicable to the site.
 4. Where any application for construction is greater than 50% of the replacement value of a component of the site, that component or the entire site shall be brought into compliance.
 5. The Director may accommodate any other scenarios that meet the intent of this Section and bring the site into greater compliance relative to the level of investment associated with the permitted activity.
- e. **Nonconforming Lots.** Any lot platted legally prior to the adoption or amendment of this code, or any parcel established legally prior to the adoption of subdivision regulations in Greeley, but

which could not be platted under the current requirements of this code, may continue to exist provided it complies with the following standards. The size and shape of any nonconforming lot shall not be altered in any way, except to increase the conformity with these regulations.

1. In any district that allows detached houses, a detached house and customary accessory buildings may be erected on any nonconforming lot, provided all standards other than lot dimensions standards are met.
 2. In any district that does not allow detached houses, the nonconforming lot may be used for the smallest-scale building type permitted in the district by these regulations, provided all standards other than lot dimension standards are met.
 3. Where any non-conforming lot is under the same ownership as an abutting lot, the City may require administrative plat procedures with regard to any development activity or use of the non-conforming lot. The administrative plat procedures, including lot line adjustments or lot consolidations, shall be used to create the greatest degree of conformity possible.
 4. Any difficulties in meeting the standards of this subsection, or other applicable standards of the development code, which are attributable to the nonconformity of the lot may be used as criteria for other relief from the standards authorized by this code.
- f. **Burden of Proof.** The burden shall be on the applicant to establish that the nonconformity was established lawfully and the entitlement to continuation of nonconforming situations or completion of nonconforming projects according to this section. Owners of nonconformities may request a “certificate of legal nonconforming status” by filing an application with the Director, and once issued the owner may record the certificate with the Weld County Clerk and Recorder..
- g. **Specific Non-conforming Situations.** At the time of any rezoning, in association with annexation, or associated with any other planning effort for a particular geographic area, the City may create rules for specific nonconforming situations. These rules shall be incorporated into the ordinance establishing a new zoning designation or creating the nonconforming situation, according to the applicable procedures of Section 24-204 Rezoning or Section 24-205 Planned Unit Development. In these situations, the Director or Planning Commission may recommend, and the City Council may approve the following:
1. **Benign Nonconformities.** A determination may be made that the nonconformity has no negative effects on the long-term development within the district, and is compatible with the intent and design objectives for future development in the immediate surroundings. In this circumstance, a benign nonconformity may be permitted with the specifically stated additional rights, beyond the standard nonconforming rights of this section.
 2. **Removal of Non-conformity.** A determination may be made that the nonconformity poses significant negative effects on the long-term development within the district, or is incompatible with the intent and design objectives for future development in the immediate surroundings. In this circumstance, a nonconformity may be phased out over time to reduce the rights of the nonconforming situation to less than permitted by this section. Any phased removal of the non-conformity shall be based upon:
 - (a) Identified risks to long-term investments in the surrounding area, and risks that could not otherwise be protected by a different zoning determination for the properties involved;
 - (b) Consideration of reasonable investments in the property up to the time the zoning established the non-conforming situation, and what is an appropriate time to allow a return on those past investments; and

- (c) Coordinating with the anticipated rate of change in the area and how the presence of the nonconformity affects that change, including other opportunities available for the nonconforming property.

Reserved Sections 24-106 through 24-200

Section 3. The Greeley Municipal Code shall be amended by adding thereto a new Chapter 2 of Title 24 to read as follows:

Chapter 2. Procedures

- 24-201 General – All Applications
- 24-202 Minor Subdivision
- 24-203 Major Subdivision
- 24-204 Rezoning
- 24-205 Planned Unit Development
- 24-206 Use by Special Review
- 24-207 Site Plan
- 24-208 Alternative Compliance
- 24-209 Variance
- 24-210 Appeals of Administrative Decision
- 24-211 Code Amendments
- 24-212 Vacation & Dedication of Easements
- 24-213 Vacation & Dedication of Right-of-way
- 24-214 Annexation

Table 24-2-1: Procedures Summary

Applications	Eligible Applicants			Pre-application Conference	Neighborhood meeting	Notice			Review Body			
	Owner	PC	CC			Post	Publish	Mail	Staff	PC	CC	ZBA
Minor Subdivision	■			☑				☐	D	A	A	
Major Subdivision - Preliminary Plat	■			☑	☐	☑	☑	☑	R	D/PH	A	
Major Subdivision – Final Plat	■			☑					D	A	Ac	
Rezoning	■	■	■	☑	☐	☑	☑	☑	R	R/PH	D/PH	
Planned Unit Development (PUD)	■		■	☑	☑	☑	☑	☑	R	R/PH	D/PH	
Use By Special Review	■			☑	☐	☑	☑	☑	R	D/PH	A	
Site Plan	■			☑		☐		☐	D	A	A	
Alternative Compliance	■			☑				☐	D	A	A	
Minor Variance	■			☑				☐	D		A	A
Variance	■			☑		☑	☑	☑	R		A	D/PH
Appeal of Administrative Decision	■	■	■			☐	☐	☐			A	D/PH

Text Amendment	☒	☒		☒	R	R/PH	D/PH
Easement Vacation/Dedication	☒			☐	D	A	A
ROW Vacation/Dedication	☒			☒	R	R	D
Annexation	☒	☒	☒	☒	R	R/PH	D/PH

☒ = Require☐ = Director Option☒ = Authorized

PC = Planning Commission

CC = City Council

ZBA = Zoning Board of Appeals

R = Review and Recommending Authority

D = Decision Making Authority

Ac = Acceptance of Public Improvements

A = Appeal of Decision

PH = Public Hearing Required

24-201 General – All Applications

a. Applications and Fees

1. **Forms.** Applications required under this code shall be submitted to the Community Development Department in the form and format specified by the Department. The Director is authorized to establish submittal requirements and procedures in order to ensure all applications can be evaluated for conformance with this code. The Director may waive the requirement for specific information at the time of application, due to the routine nature of the application or due to the context of a particular application making the information inapplicable for review against the standards and criteria of this code.
2. **Fees.** Applications shall be accompanied by a non-refundable fee set administratively by the City Manager. A copy of the fee schedule shall be maintained by the Community Development Department and City Clerk's office for public inspection. No application shall be accepted or processed without the required fee, except applications initiated by the City.
3. **Eligible Applicants.** Table 24-2-1 indicates applicants eligible for each particular application under this code:
 - (a) **Owner.** The property owner of record for the subject property of the application or that owner's agent authorized by written permission of the owner.
 - (b) **Planning Commission.** The Planning Commission, acting on its own initiative or through recommendations brought to it by city staff, and according to its bylaws and rules of procedure.
 - (c) **City Council.** The City Council acting on its own initiative or through recommendations brought to it by city staff of Planning Commission, and according to its bylaws and rules of procedure.

b. Concurrent Applications. When a project requires approvals under more than one type of application, the Director may determine that each application may run concurrently based on the following:

1. The similarity of information required for each type of application, or where they require different information, the ability to coordinate information, review criteria and decisions under each application.
2. The similarity of notice, review meetings and review bodies required for each application.
3. The ability of the staff and review bodies to make effective decisions when reviewing the applications concurrently.

In cases where the Director determines applications may run concurrently, the application shall be processed through the most comprehensive required review, and lesser incorporated approvals may be conditioned on final outcomes of the last of the related decision.

c. Pre-application Meeting. Pre-application meetings may be requested for any application and shall be required as indicated in Table 24-2-1. A required pre-application meeting may be waived at the Director's discretion and upon the applicant's request, for routine applications where the topics below can be addressed by general correspondence. The applicant shall submit schematic plans, existing conditions analysis, or other concepts and analysis in writing prior to the pre-application meeting to facilitate discussion on the following topics:

1. How the proposed project meets the goals of the Comprehensive Plan, or other specific plans or policies that may impact the application.
2. The applicant's vision and understanding of the market for the proposed project.
3. The proposed uses, general site layout, and conceptual or anticipated design of buildings, including how the project relates to surrounding sites and public spaces.

4. How the project will fit in and contribute to the area and further the intent of the existing or proposed zoning district.
 5. Planning and infrastructure impacts, including timing, phasing, or the need for any technical studies or outside agency coordination and review.
 6. Development review processes and review criteria, and in particular whether any special public information and outreach or specific agency or department reviews are necessary.
 7. Opportunities to improve designs or coordinate the preliminary concepts with other private or public investments in the area.
- d. **Staff Review.** Upon receipt of an application, the Director shall take the following steps:
1. **Determination of Complete Application.**
 - (a) If an application is determined incomplete, the Director shall notify the applicant of the specific ways in which the application is deficient. No further processing of the application shall occur until the deficiencies are corrected. If a deficient application is not corrected within 30 days of the notice, the Director may consider the incomplete application withdrawn.
 - (b) If an application is complete, it shall be processed for formal review.
 2. **Referrals.** The following agencies may be required to review and comment on applications. The Director may determine if other referral agencies may be affected by the project, based on the application and has discretion to add any other relevant or applicable agency to the list.
 - (a) Adjacent or other local governments
 - (b) Colorado Department of Transportation
 - (c) Colorado Parks and Wildlife
 - (d) Colorado Geologic Survey
 - (e) Office of State Engineer
 - (f) Gas and electric utilities;
 - (g) Telecommunications and cable providers;
 - (h) Public safety agencies (police, fire, EMS, health);
 - (i) Respective school district(s) in which the subject property is located;
 - (j) Water and sewer utilities;
 - (k) Ditch companies;
 - (l) Special districts; and
 - (m) Other local, state, or federal government agencies.
 3. **Review & Staff Comments.** The Director shall coordinate a staff review after receipt of a complete application, and may provide the applicant the following information in writing:
 - a. Comments or recommended changes based on the results of any referral agency comments, neighborhood meetings, or staff review.
 - b. Any supplemental information necessary to support the application or to address any comments or recommended changes.
 - c. If the applicant chooses not to address any particular comment or recommended change, a written statement shall be included with the resubmittal that demonstrates a good faith effort to address the issue and justify why the comment was not addressed. The applicant may request to schedule the application for official review based on this justification.
 - d. If the applicant fails to submit revisions or otherwise address staff comments in writing for more than 120 days, the Director may determine the application withdrawn, and the review terminated. Any further action will require a new application and fees.

4. **Scheduling.** Applications that have completed staff review, and addressed comments or recommended changes, shall be scheduled for further review according to these regulations.
 5. **Staff Report.** The Director shall prepare a staff report for applications that require review and decisions by other review bodies. The report shall identify the policies, plans, regulations and review criteria, and identify relevant facts of the application. The Director shall provide a copy of the report to the reviewing body and to the applicant in association with the public meeting agendas and packets.
- e. **Neighborhood Meeting.** A neighborhood meeting may be required prior to the formal public meeting as indicated in Table 24-2-1.
1. **Director Option.** At the pre-application meeting or in association with the review of an application, the Director may require a neighborhood meeting for any project that requires formal review beyond staff, and where:
 - (a) the nature of the project is complex or presents potential for significant changes and unanticipated impacts on property in the vicinity;
 - (b) the intensity of the proposed use or development is likely to present questions and concerns for adjacent property owners, beyond what may typically be allowed in the zoning district; or
 - (c) the required notice or any courtesy notice sent to property owners generates significant questions or concerns.
 2. **Required Meeting or Applicant Option.** A neighborhood meeting is required for any PUD application, and an applicant may elect to have a neighborhood meeting on any other project. These neighborhood meetings should be held prior to a formal application so that input and concerns of potentially impacted property may be considered in the initial application.
 3. **Meeting Format.** Neighborhood meetings shall meet the following:
 - (a) The Director shall coordinate the scheduling, meeting location, and notice..
 - (b) The meeting shall be held at a City facility, or where any other convenient and accessible public meeting facility within the general vicinity of the project, such as a school, community recreation center.
 - (c) The applicant is responsible for all content of the meeting, which at a minimum shall include:
 - (1) The general nature and scope of the proposed project;
 - (2) A summary of the proposed land use, including planned and potential future uses associated with the application;
 - (3) The most recent plans and submittals available for the project, depicting the scale, location and design of any buildings and the relation of all site improvements to the streets and adjacent property; and
 - (4) Identify and explain the subsequent formal review steps with the City, and note that official and formal review by the City may result in changes from the initial concepts.
 - (d) The applicant shall prepare minutes of the meeting including evidence of the notice, attendance, a copy of any presentation materials, a summary of the discussion and issues, and any outcomes or changes from the meeting. These minutes shall supplement the formal application.
- f. **Notice.** Notice shall be provided for each application as indicated in Table 24-2-1. Consistent with the provisions in Table 24-2-1, and in addition to the general publication of meeting agendas, required notice may include the following:

1. **Published.** Where published notice is required, the City shall post the notice on the public notice portion of the City's official website at least 15 days prior to the meeting or hearing. The notice shall include:
 - (a) A general description of the subject property by reference to streets and address;
 - (b) The zoning classification, specific use or action requested;
 - (c) The date, time and place of the public meeting; and
 - (d) A statement that additional information about the request is available at the Community Development Department, or other links to relevant information.

2. **Posted.** Where posted notice is required, notice shall be posted on the property or near the proposed site, visible to surrounding properties and the general public from adjacent public ways, according to the following:
 - (a) The City shall supply the sign(s), which shall include:
 - (1) The zoning classification, specific use or action requested;
 - (2) The date, time and place of the public meeting; and
 - (3) A statement that additional information about the application is available at the Community Development Department
 - (b) One sign facing the most prominent public street is required. The Director may require additional signs and specific locations of signs based on the context of the property.
 - (c) The applicant shall ensure that all signs are posted at least 15 days prior to the public hearing or meeting.
 - (d) The applicant shall supplement the application evidence and a signed statement of compliance with the notice requirement.
 - (e) The applicant shall make a reasonable good faith effort to maintain posted notice throughout the proceedings.

3. **Mailed.** Where mailed notice is required, a courtesy letter shall be sent to all record landowners within 500 feet of the property. However, where the project is very large or intense, or where land ownership patterns would result in few owners being notified, the Director may extend this up to 1,000 feet from the property. Where mailed notice is at the option of the Director, any distance may be established by the Director based on the scale and intensity of the proposed project.
 - (a) The city shall supply the list of owners, and the applicant is responsible for mailing notice.
 - (b) The notice shall be mailed at least 15 days prior to the public meeting.
 - (c) Mailed notice shall state the following:
 - (1) A general description of the subject property by reference to streets and address;
 - (2) The zoning classification, specific use or action requested, and a general description of the project;
 - (3) A legal description or abbreviated legal description of the property;
 - (4) The date, time and place of the public meeting;
 - (5) Whether the meeting is a public hearing, where participants will have a right to speak, present testimony or evidence, and establish a record for the decision, or whether it is a public meeting without that right; and
 - (6) A statement that additional information about the application is available at the Community Development Department.
 - (d) The applicant shall submit a copy of the notice with the application, and evidence and a signed statement verifying notice was sent to all landowners prior to the public meeting or hearing.

4. **Failure of Notice.** Any failure of published, posted or mailed notice shall not invalidate any subsequent process or decision, in the Director's discretion. In making this decision, the Director shall consider whether:
 - (a) Good faith efforts were made to comply with notice, and the failure of notice was beyond the applicant's control;
 - (b) Technical errors in the notice were made, but constructive and actual notice was available to all interested parties; or
 - (c) The failure of notice is not otherwise instrumental to the proceedings, criteria, or record established for the decision.

5. **Surface Development Notice.** Where mailed notice is required by state statutes for any project related to mineral estate owners identified on the county tax assessor's records or who have filed in the office of the county clerk and recorder a request for notification, the applicant shall be responsible for notice. The applicant shall certify that notice has been provided as required by this code and Colorado law prior to a public hearing, public meeting or administrative decision.

- g. **Public Hearings.** Where public hearings are required by Table 24-2-1, the following procedures apply:
 1. The hearing shall be conducted and a record of the proceedings shall be preserved.
 2. Any interested person or party may appear and be heard in person or by agent.
 3. The review body may request testimony or a report on the application from any government official or agency, or any other person with information pertinent to the application.
 4. A public hearing for which proper notice was given may be continued to a later date without again requiring notice, provided the specific date, time, and place of the continued hearing is announced at the original hearing.
 5. If the review body is a recommending body, a written summary of the meeting and the recommendation shall be forwarded to the decision-making body.
 6. A review body is authorized to establish meeting procedures and bylaws, or otherwise state rules regarding specific conduct and management of public hearings, within the parameters of these regulations.

- h. **Action by Review Bodies.** Review bodies shall take the actions indicated in Table 24-2-1. A review body may take any action on the application consistent with notice given and based on the criteria in this Chapter, or it may recommend such action when the review body is a recommending body, including the following:
 1. Approve the application.
 2. Approve the application, with conditions or modifications that make it more consistent with the standards and review criteria.
 3. Deny the application, making specific findings or stating criteria for the denial.
 4. Continue the application to allow further analysis. The continuation period shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

- i. **Appeals.** Where a review body is designated as the appellate body in Table 24-2-1, the following appeal procedures apply:
 1. Appeals shall be filed with the Director within 10 days of the decision by the decision-making review body.
 2. Appeals shall identify the exact provisions in dispute, and whether it is incorrect due to one or more of the following:
 - (a) It was against the express standards of this development code;

- (b) It was an unreasonable interpretation or application of the standards or review criteria;
 - (c) It was erroneous, based on the record and facts reviewed by the decision-making body; or
 - (d) It was otherwise clearly contrary to law.
 - 3. Appeals may be filed by:
 - (a) the applicant;
 - (b) any person who received mailed notice and who testified or entered a statement at a public hearing; or
 - (c) any director of a city department or referral agency that provided comments on an application.
 - 4. The appellate body shall consider the application within a reasonable time, considering the next available meeting and the nature of the appeal. The appeal shall be based on the established record, and give deference to the previous review body; however, the appellate body may take any action authorized by the decision-making body under this code if it determines that a clear error was made. The procedure and required notice for an appeal shall be the same as required of the original application.
 - 5. Where no appeal is designated in Table 24-2-1, the decision shall be final and only appealed as authorized by state law.
- j. **Technical Studies.** The Director, on behalf of any public official, department, or agency, the Planning Commission, or the City Council, may require applicants to submit technical studies necessary to evaluate the application. Technical review by outside entities with expertise or jurisdiction over details of the application may be required in place of, in addition to, or in association with any studies. Examples of technical studies that may be required include traffic studies, engineering studies, geologic or hydrologic studies, environmental impact assessments, noise studies, market studies, or fiscal and economic impact studies. The persons or firms preparing the studies shall be subject to the approval of the Director. The costs of all studies shall be borne by the applicant. Any application that is determined to require technical studies or review from entities outside of the City may require special schedules based on the reasonable time frames to conduct those studies or additional reviews.
- k. **Successive Applications.** When the review body takes final action to deny an application, the same or a similar application may not be refiled for one year from date of denial, except as allowed under this section. The Director may permit a refiling of the application sooner than one year when it is determined that significant physical, economic, or land use changes have taken place within the immediate vicinity, or where a significant text amendment to this code has been adopted that may affect the outcome. There shall be no time limitation on an application that the Director determines is substantially different from a previously denied application, considering the proposed use, scale or intensity of development, and potential impacts on adjacent property.
- l. **Vested Rights.** Greeley, through its home rule authority recognizes vested property rights as specified in this Code. This code preempts and determines which applications are “site specific development plans” for the purposes of the Colorado Vested Property Rights Law, and establishes different rights and obligations associated with approvals. The vested rights in this code meet the intent and objectives of the Colorado Vested Property Rights Law, and ensures all constitutional rights intended to be protected by that law. However, through the Greeley home rule authority, and its statutory obligation to implement the Comprehensive Plan and protect the public safety, health and general welfare, vesting shall only occur to the extent of the standards of this code reflected in specific approved applications. Vesting does not include other regulations that are general in nature or that apply equally to all property subject to these regulations. Vesting does not exempt applications from any subsequent review and approvals prior to construction under this code or other codes. Vesting does not insulate a project from other public health and safety codes, including changes or updates to codes associated with subsequent

reviews, including construction drawings and specifications, drainage plans and permits, and building permits.

24-202 Minor Subdivision

- a. **Applicability.** Minor subdivisions are routine applications that establish or alter legal boundaries of lots or tracts, but do not significantly alter development patterns or impact public improvements and facilities. Minor subdivision applications may be initiated by the property owner. The following actions may be processed as minor subdivisions:
 1. **Lot Line Adjustment.** The alteration of legal boundaries for up to four previously platted lots.
 2. **Lot Consolidation.** The consolidation of up to four previously platted lots or parcels into fewer lots, provided that no resulting lot is larger than three times the size of the largest existing lot or parcel.
 3. **Minor Plat.** The division of land or the replat of previously platted lots or tracts into 10 or fewer lots for residential purposes, or six or fewer lots for any non-residential purposes; or the division of land where all resulting lots or tracts are more than 80 acres; or any development without a land division on a previously unplatted parcel.
 4. **Plat Correction.** A survey or other legal instrument to correct an error in the legal description or other element of an approved plat; to dedicate, vacate, or alter easements; or to confirm legal boundaries of lots in an approved plat that could only be determined post-construction, such as for duplexes or row houses where the units and lots are individually owned.
 5. **Condominium Plat.** The division of a building on an existing, legally platted lot into individual air space ownership units, relative to commonly owned elements and common area covenants and agreements.
- b. **Review Criteria.** A minor subdivision may be approved by the Director if the Director determines that all of the following are met.
 1. No new streets or other public land dedication is needed. If additional right-of-way for existing streets is included with a minor subdivision, acceptance of the dedication by City Council is required.
 2. No significant increase in service requirements (utilities, schools, traffic control, streets, etc.) or impact on the ability to maintain existing service levels will result.
 3. The application does not alter the interpretation of any zoning district boundaries due to adjustments to any lots.
 4. All resulting lots meet the legal standards of the subdivision regulations and applicable zoning districts.
 5. The lot patterns meet all eligibility requirements for minor subdivisions, and are otherwise compatible with the surrounding area and any previously approved preliminary or final plat for the subject property. In determining compatibility, the size and dimension of lots, the layout and design of existing subdivisions and rights-of-way, the degree of change to the character and pattern of buildings, and potential impact on surrounding property shall be considered.
 6. No other significant issues exist with potential development enabled by the plat that could impact planning policies in the area or adjacent property owners.
 7. A condominium plat shall meet the following additional criteria:
 - (a) Consistent with an approved plat demonstrating legal ownership of the lot and any common areas by a single entity.
 - (b) Consistent with a site plan depicting the building to be subdivided into individual units.

- (c) Documentation that assigns responsibility and demonstrates capacity to maintain all common ownership elements.
- (d) Covenants, declarations or party wall agreements or other restrictions to be recorded establish rights and responsibilities for owners of individual units, and designation of all general and limited common elements
- (e) The site and building comply with all aspects of this development code, other than the proposal to divide individual airspace units for common ownership.

Any application not classified as a minor subdivision or not meeting these criteria shall be processed as a major subdivision with a preliminary and final plat.

- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to minor subdivision applications:
 - 1. If the Director determines at any point in the process that the application is not eligible for a minor subdivision, the Director may deny the application or allow the applicant to reclassify as a major subdivision according to additional required information or fees.
 - 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.
 - 3. If a minor subdivision includes additions to existing right-of-way, the minor subdivision shall be placed on the consent agenda for the City Council to accept the dedication.
- d. **Effect of Decision.**
 - 1. *Subdivision Improvement Agreement.* The applicant shall enter into a Subdivision Improvement Agreement for any required improvements, which shall be recorded with or prior to recording of the minor subdivision. The Director may waive the need for a Subdivision Improvement Agreement where there are no required improvements or for routine applications, where the requirements of this code are sufficient to address construction of improvements.
 - 2. *Recording.* The Director shall record the minor subdivision with the Weld County Clerk and Recorder within 60 days. The Director may grant an extension of this period for up to 90 days in order to complete any agreement, or otherwise address the timing and implementation of improvements. Any minor subdivision not recorded within this time shall expire.
 - 3. *Vested Rights.* A recorded minor subdivision shall create a vested property right for 3 years, or for any other time specifically identified in a Subdivision Improvement Agreement. If improvements or other obligations are not completed within this time, or the applicant or future landowners otherwise default on the Subdivision Improvement Agreement, the minor subdivision shall expire and a new plat shall be required prior to any development.

24-203 Major Subdivision

- a. **Applicability.** Major subdivisions apply to all land divisions or other alterations of legal boundaries of lots or tracts that are ineligible for minor subdivision processes in Section 24-202. Major subdivision applications may be initiated by the property owner. Major subdivisions require comprehensive review through separate preliminary and final plat procedures, due to the complexity of coordinating planning, design and engineering requirements. In accordance with Section 24-201.b, the Director may determine at a pre-application conference that a preliminary and final plat may be submitted concurrently, where the application is small or routine.
- b. **Preliminary Plat.** The preliminary plat provides detailed planning review of development patterns, street networks, block and lot layout, and the ability to meet public facility and utility

requirements for future development, prior to preparation of detailed construction and engineering plans. A preliminary plat shall be processed according to the following specific procedures.

1. **Review Criteria.** A preliminary plat shall be reviewed according to the following criteria:
 - (a) The application is in accordance with the Comprehensive Plan, or any other specific plan created under that plan, and in particular, the physical development patterns and design concepts of the plan.
 - (b) The development and infrastructure is arranged in a manner to minimize impacts on geologic hazards, environmentally sensitive areas, wildlife habitat, or other natural features of the land.
 - (c) The arrangement and proposed design of streets, blocks, and open spaces meet the development and design standards of the subdivision regulations, and are coordinated with existing or potential development on adjacent property.
 - (d) The proposed blocks and lots are capable of meeting all development and site design standards under the applicable zoning district.
 - (e) The application demonstrates a preliminary likelihood of being able to meet the design, construction, performance, and maintenance requirements for all required improvements.
 - (f) Any phasing is clearly indicated and demonstrates a logical and coordinated approach to development, and the timing, location, and construction of amenities is consistent throughout phases.
 - (g) Any impacts identified by specific studies or technical reports, including a review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.
 - (h) The design does not impede the construction of anticipated or planned future public infrastructure within the area, or deter future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.
 - (i) The recommendations of professional staff or any other referral agencies authorized to review the subdivision plan.

2. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to preliminary plat applications:
 - (a) At the pre-application meeting, and based on the size, scope and impact of any future development anticipated or pending with the request, the Director shall determine how to coordinate the Neighborhood Meeting and any additional notice of meetings or hearings necessary for the formal review.
 - (b) Any application that is particularly complex or involves significant planning and design issues, may be coordinated with a Rezoning in Section 24-204 or a Planned Unit in Section 24-205, prior to official submittal of a preliminary plat.
 - (c) After review by staff, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission
 - (d) The Planning Commission shall hold a public hearing and make a decision on the preliminary plat. Provided no substantial changes are made in association with a subsequent final plat, a final plat may be administratively approved by staff and public improvements accepted by City Council according to subsection 24-203.c.2.

3. **Effect of Decision.** The approval of the preliminary plat does not constitute an acceptance of the subdivision but authorizes preparation of the final plat. Denial of a preliminary plat may be appealed to the City Council.

4. **Term of Expiration.** The approval of the preliminary plat shall be effective for three years, except that any complete submittal of final plat for any phases indicated on a preliminary plat shall stall the three-year period, and approval of the final plat shall extend the expiration deadline for one year for the remaining portions of the preliminary plat. The Director may grant up to two extensions of this period for up to six months each, if the applicant demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat. Any such extension shall be requested by the applicant in writing prior to the expiration of the preliminary plat.
- c. **Final Plat.** A final plat requires review and refinement of the preliminary plat, review and coordination of construction documents, and review and dedication of easements, rights-of-way and public lands prior to recording subdivisions and authorizing the sale of lots to different owners. After approval of the preliminary plat, the applicant may submit a final plat for all or for portions of the preliminary plat area subject to a phasing plan approved with the preliminary plat. A final plat shall be processed according to the following specific procedures.
1. **Review Criteria.** A final plat shall be reviewed according to the following criteria, as well as all criteria applicable to the preliminary plat review:
 - (a) The layout and design of the final plat is consistent with the approved preliminary plat considering the number and size of lots and out lots; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments. Deviations that result from further detail in planning, design, and engineering, and that meet the standards of this code, are generally considered “consistent” with the subdivision plan.
 - (b) The construction plans for any utilities, infrastructure or public facilities meet all technical specifications.
 - (c) All required improvements, dedications, fees, financial guarantees, and maintenance guarantees are provided.
 - (d) The phasing and timing of public improvements ensures construction and performance guarantees. Any phasing that meets an approved preliminary plat is presumed acceptable. Any deviations of the final plats from an approved phasing plan may be approved provided it does not alter the timing or coordination of required improvements or amenities for the proposed final plat or any previous approved final plats.
 - (e) The recommendations of professional staff or any other public entity authorized to review the final plat.
 - (f) Deviations in the final plat from the approved preliminary plat may be approved if:
 - (1) Any aspect of the project different from the approved preliminary plat complies with all applicable zoning standards, subdivision design standards, and meets the intent and design objectives of those standards.
 - (2) The change does not increase the impact of any development on required improvements beyond the capacity for required improvements established in the preliminary plat;
 - (3) The change does not violate any condition of the Planning Commission associated with the approval of the preliminary plat or any general development plan applicable to the property;
 - (4) If technical studies were required with the preliminary plat, the author of the study shall submit an amendment noting that the change does not impact any findings of the study; and
 - (5) The change is generally consistent with development concepts in the preliminary plat in terms of land uses, scale and intensity of development, and in no case changes the number of lots, dwelling units,

or buildings, or sizes of blocks and open spaces by more than 10 percent.

2. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this section apply to final plat applications:
 - (a) The applicant shall identify all improvements to be constructed, either according to the required improvements listed this code or by a specific agreement for the project. The applicant shall submit final plans and specifications for these improvements, and ensure construction of these improvements of financial guarantees as provided in Section 24-304.
 - (b) The staff shall review the final plat for conformance with the planning and design elements, and the engineering specifications for required improvements, and a final plat meeting these criteria shall be approved.
 - (c) A final plat not meeting the review criteria may require reprocessing as a revised preliminary plat.
 - (d) The Director shall make the final decision on final plats.
 - (e) Any final plat approved by the Director and which includes dedication of rights-of-way, public lands or other public improvements, shall be placed on the consent agenda for the City Council to accept the dedication.

3. **Effect of Decision.**
 - (a) **Subdivision Improvement Agreement.** The applicant shall enter into a Subdivision Improvement Agreement with the City for any required improvements, which shall be recorded with or prior to recording of the final plat. The Director may waive the need for a Subdivision Improvement Agreement where there are no required improvements or for routine applications, where the requirements of the code are sufficient to address construction of improvements. At a minimum, the agreement shall indicate the following:
 - (1) Acknowledgement of all required improvements per Section 24-304 of this code, and any specific deviations or additions from this section.
 - (2) A refined timeline coordinating construction drawings, permits, construction, inspections and final acceptance.
 - (3) Specifics on performance and maintenance guarantees, and any particular consequences or contingencies if there is a default.
 - (4) Any additional improvements made necessary by technical studies required by Section 24-201.j or adequate public facilities analysis in Section 24-305.
 - (5) A provision binding any future landowners to the agreement.
 - (6) Any other requirements prior to building permits or certificates of occupancy.
 - (b) **Recording.** The Director shall record the final plat with the Weld County Clerk and Recorder within 60 days. The Director may grant an extension of this period for up to 90 days in order to complete any agreement, or otherwise address the timing and implementation of improvements. Any final plat not recorded within this time shall expire.
 - (c) **Vested Rights.** A recorded final plat shall create a vested property right for 3 years, or for any other time specifically identified in a Subdivision Improvement Agreement. If improvements or other obligations are not completed within this time, or the applicant or future landowners otherwise default on the Subdivision Improvement Agreement, the final plat shall expire and a new plat shall be required prior to any development.

24-204 Rezoning

- a. **Applicability.** The rezoning process provides review of changes to the boundary of zoning districts that may be necessary to implement the Comprehensive Plan, to account for changed conditions in the general area, or to reflect a change in policies with respect to future development. Application for a rezoning may be filed by the property owner, the City Council, or the Planning Commission, or by Staff on behalf of these city entities.
- b. **Review Criteria.** Review, recommendations and decisions for a proposed rezoning shall be based on the following criteria:
 1. The proposal is in accordance with the goals and objectives of the Comprehensive Plan and any other plan, policy or guidance adopted pursuant to that plan.
 2. The proposal can fulfill the intent of the zoning district considering the relationship to surrounding areas.
 3. Whether the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area
 4. Whether the existing zoning been in place for a substantial time without development, and if this indicates the existing zoning is inappropriate given development trends in the vicinity.
 5. The proposed zoning will enable development in character with existing or anticipated development in the area considering the design of streets, civic spaces and other open space; the pattern, scale and format of buildings and sites; and the compatibility and transitions with other complimentary uses and development.
 6. The City or other agencies have the ability to provide services or facilities that may be necessary for anticipated uses in the proposed district.
 7. The change will serve a community need, provide an amenity or accommodate development that is not possible under the current zoning or that was not anticipated at the time of the initial zoning of the property, making the proposed zoning more appropriate than the current zoning.
 8. Any reasonably anticipated negative impacts on the area or adjacent property either are mitigated by sound planning, design and engineering practices or are outweighed by broader public benefits to the surrounding community.
 9. The recommendations of professional staff or advisory review bodies.
- c. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to rezoning applications:
 1. Applications may be accompanied by any preliminary plat, site plan, zoning suitability plan, or other plan necessary to review conformance with the Comprehensive Plan.
 2. At the pre-application meeting, and based on the size, scope and impact of any future development anticipated or pending with the request, the Director shall determine how to coordinate the Neighborhood Meeting and any additional notice of meetings or hearings necessary for the formal review.
 3. After review by staff, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission.
 4. The Planning Commission shall hold a public hearing and shall make a recommendation to the City Council. Upon a recommendation from the Planning Commission, the City Council shall hold a public hearing and make the final decision on rezoning applications.
 5. Rezoning may be conditioned upon anything that further ensures the criteria for rezoning will be met, including:

- (a) A plan that identifies general land use categories, the arrangement and character of streets and open spaces, and the anticipated scale, intensity and character of development and how it relates to adjacent areas.
 - (b) Addressing any existing uses that become non-conforming as provided in Section 24-105.g.
- 6. Approval of a rezoning shall be by ordinance approved by the City Council.
- d. **Effect of Decision.** Upon approval of a change in the district boundaries, the Director shall record a copy of the ordinance approving the zone change with the City Clerk. The Director shall make the change on the official map by an actual change or other record identifying the ordinance and the associated property. The zoning shall remain in effect unless changed by the City Council according to the procedures specified in these regulations.

24-205 Planned Unit Development

- a. **Applicability.** A planned unit development (PUD) application is a type of rezoning based on a specific and integrated development plan, and must follow the procedures and meet the requirements of the rezoning process.
 - 1. Application for a PUD may be filed by the property owner, the City Council, or by staff on behalf of the City Council.
 - 2. The PUD process is intended for development concepts that require a higher degree of specific planning based on the scale and complexity of the project. The higher degree of planning affords flexibility in the standards to improve the relationship of the project to the context, and to better meet the purpose, intent and objectives of this code.
 - 3. A PUD shall include sufficient area to implement planning concepts that generate broader public benefits that can only be gained from flexible application of the standards, and not simply be used to justify deviations for single projects or on a site-specific basis.
 - 4. Generally PUD applications shall include at least 5 acres. Applications for smaller PUD applications may be processed by the Director for:
 - (a) additions to previously approved PUDs if the flexible application of standards is used to integrate projects with previous plans; or
 - (b) projects with a mix of uses that are not otherwise accounted for by one or a combination of the base zoning districts of the code.
- b. **Development Plan.** A PUD requires approval of a specific plan for coordinated development of the entire area within a PUD and shall include the following:
 - 1. **Existing Conditions.** Existing conditions reflect the current state of the property. This includes an analysis identifying the general layout of any existing structures, streets or infrastructure; the location of natural features such as watercourses, steep grades, significant stands of trees, specimen trees or other significant or sensitive features; and the presence and relationships to these same conditions on adjacent property.
 - 2. **Master Development Plan.** A Master Development Plan presents the vision for the project. It identifies the area and relationship of general land use categories, the arrangement and character of streets and open spaces, and the anticipated scale, intensity and character of development through maps, illustrations of development concepts, and statements on the intent and objectives for the project. The Master Development Plan shall indicate why the flexibility requested is justified by the plan and how it could not be easily achieved by other zoning designations. The Master Development Plan shall include the following:

- (a) **Project Boundary.** The overall boundary and name of the Planned Unit Development.
 - (b) **General Layout.** The general development pattern of streets, blocks and open spaces in the concept plan.
 - (c) **Public and Community Facilities.** The location of school sites, amenities, focal points, parks and trails, including any land dedicated to or reserved for acquisition by any public entities.
 - (d) **Planning Areas.** The designation of distinct areas of the project in terms of land uses, intensity or density of development, range of building types, or other unique design characteristics or amenities of the project. All planning areas and open space areas shall be shown overlaid on topography at a scale that clearly delineates the planning area boundaries so that they can be located on the site. For each planning area or within a separate table, indicate the following: acreage; number of dwelling units; land use designation; residential density or nonresidential square footage.
 - (e) **Specific Regulations & Deviations.** The most applicable base zoning district in terms of uses, development standards or design standards shall be designated for each planning area, and specific deviations from these standards shall be identified. These deviations may be more permissive or more restrictive than otherwise applicable standards, but should anticipate long-term development and potential future changes. To the extent items are not addressed by specific deviations, the base zoning district standards will control.
 - (f) **Phasing or Implementation.** Phasing or implementation indicates a strategy and estimated timing of development, and any other administrative details of implementing the plan through future plats and site plans.
 3. **Detail Plans.** The PUD may include detail plans and specifications such as renderings, elevations or plans of buildings, streetscapes, and public spaces or other urban design and architectural details demonstrating how the plan will be executed according to the proposed development standards.
 4. **Statement of Commitments.** The applicant shall provide a statement of commitments regarding all future aspects of development, and how these commitments shall be coordinated with the phasing and subsequent platting of the projects. Commitments shall at a minimum include the following:
 - a. Streets and streetscape designs required by Section 24-301.
 - b. Open and civic spaces, whether public, common or private, required by Section 24-302.
 - c. Improvements and performance and maintenance guarantees required by Section 24-304.
 - d. Any additional improvements or dedications to other public entities needed by the adequate facility analysis in Section 24-305.
 - e. Any additional improvements, open spaces, or other development pre-requisites resulting from technical studies that may be required by Section 24-201.j.
 5. **Other Information.** Any other information otherwise required by the city for rezoning.
- c. **Review Criteria**

1. **Generally.** Review, recommendations and decisions for new PUDs shall be based on the following criteria:
 - (a) The plan reflects greater consistency with or more specificity in implementing the Comprehensive Plan than what could be accomplished under application of general zoning districts and development standards.
 - (b) The benefits from any flexibility in the proposed plan:
 - (1) promote the general public health, safety and welfare of the community, and in particular, that of the areas immediately near or within the proposed project, and is not strictly to benefit the applicant or a single project;
 - (2) involves innovative concepts that were not anticipated by the development code; or
 - (3) apply to a unique or specific context in a manner that allows the project to better meet the intent or design objectives of the base zoning districts and standards.
 - (c) The plan reflects generally accepted and sound planning and urban design principles with respect to applying the goals and objectives of the Comprehensive Plan to the area.
 - (d) The plan meets all of the review criteria for zoning map amendments in Section 24-204.

2. **Minor Amendment to PUDs.** Minor amendments to PUDs may be approved by the Director, provided it meets the all of the criteria for the initial approval of the PUD, and is limited to the following:
 - (a) Any change in the number of housing units, change in lot sizes or dimensions, or increase in the land of non-residential uses is less than 5%.
 - (b) There is no decrease in the amount of open space or other reduction of amenities from the approved plan.
 - (c) Any change in a building location is no more than 10% of the approved distance to adjacent property lines.
 - (d) Any change in the height or square footage of buildings is no more than 10% of the approved measurements.
 - (e) Any change in a design standard meets the criteria for alternative compliance in Section 24-208.
 - (f) Changes to the boundaries of any planning areas do not change the boundaries of the PUD, do not later the mix of uses by more than 10% in land area or square footage, and otherwise reflect a similar land use plan.
 - (g) The proposed change is consistent with concept plans in the previously approved planned unit development;
 - (h) The plan meets all of the review criteria for site plans in Section 24-207.

3. **Major Amendment to PUDs.** Changes to previously approved PUDs that exceed allowances for minor amendments may be proposed for a portion of the area under the following criteria:
 - (a) The proposed change does not create potential impacts on other property in the PUD that are greater than would could typically occur in similar zoning districts or contexts; and
 - (b) The process and criteria for the initial approval of a PUD are met.

- d. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to PUDs:
 1. The planned unit development application is a type of rezoning and shall follow the procedures applicable to rezoning in Section 24-204.c.

2. Based on the complexity of projects and degree of advanced planning and urban design necessary for a project, the applicant may elect to break elements of a general development plan in subsection 24-205.b. into two or more steps to review concepts and preliminary designs prior to approval of the complete development plan.
 3. In most cases, land will need to be subdivided in order to carry out a development plan. The platting process is a separate process but may run concurrently with the planned unit development process, as specified in Section 24-201.b.
- e. **Effect of Decision.** Upon approval of a rezoning to PUD, the Director shall record a copy of the ordinance approving the zone change with the City Clerk. The Director shall make the change on the official map by an actual change or other record identifying the ordinance and the associated property. The entire area shall be designated by the name of the PUD and reference to the PUD Master Development Plan. The specific regulations in the Master Development Plan may be based on base zoning districts, and allow any development consistent with the base zoning districts except as specifically modified by the PUD Master Development Plan. The PUD zoning shall remain in effect unless changed by the City Council according to the procedures specified in these regulations.

24-206 Use By Special Review

- a. **Applicability.** A use by special review provides flexibility for different uses within a zoning district and allows the potential for additional uses subject to specific conditions and a case-specific review. These uses may require specific design, operational limitations, or additional mitigation to ensure the use is appropriate in a specific location. Use by special review may be initiated by the property owner.

This process is specifically applicable to uses identified as use by special review (“S”) in the Use Table in Section 24-402.

- b. **Review Criteria.** A use by special review shall be reviewed according to the following criteria:
1. All criteria for site plan review in Section 24-207. are met
 2. The application furthers the intent of the proposed zoning district, does not conflict with the intent of any abutting districts, and is otherwise determined to be consistent with the Comprehensive Plan.
 3. Any associated site development or construction complies with requirements of this code, including any conditions or additional requirements identified for the particular use.
 4. Compatibility with the area in terms of operating characteristics such as hours of operation, visible and audible impacts, traffic patterns, intensity of use, and other potential impacts on adjacent property. The cumulative impact of a concentration of similar existing uses may be considered as part of the impact of a particular use.
 5. The site is physically suitable for the proposed use, and whether any additional site-specific conditions are necessary for the use to be appropriate and meet these criteria.
 6. Whether a limited time period for the permit is reasonably necessary to either limit the duration of the use, assess the use against changing conditions in the area, or ensure periodic reporting and ongoing enforcement of the permit.
 7. The long-range plans for the surrounding area are not negatively impacted considering the permanence of the proposed use, the permanence of existing uses in the area, and any changes in character occurring in the area.
 8. The recommendations of professional staff or other technical reviews associated with the application.
- c. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to use by special review applications:

1. Applications shall be accompanied by a site plan to review conformance of any construction with standards of this code, and to review any performance criteria for the particular uses when applied to the site or building.
 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission.
 3. The Planning Commission shall hold a public hearing and shall make a final decision on uses by special review, and the decision may be appealed to the City Council.
 4. The Planning Commission may attach any additional conditions on the use addressing the physical development, operations, maintenance or any other limitation it feels necessary to ensure the application meets the review criteria.
- d. **Effect of Decision.** Approval of a use by special review shall authorize the applicant to apply for a building permit and other applicable development or construction permits.
1. A use by special review shall expire within one year, if the applicant has not submitted a building permit application, or application for other permits, licenses or approvals necessary to establish the use. The Directory may grant a one-year extension to this period. This period is distinct from any duration limits, periodic reviews or renewal periods once the use is established, which may be a condition of approval of the use.
 2. Ceasing the use for a period of more than 1 year shall be considered abandonment of the use by special review, and the approval shall expire.
 3. Minor changes to an approved use by special review may be approved by Director upon finding all of the following:
 - (a) The change expands the floor area of the original approval by less than 10%;
 - (b) There is not a change of use or significant increase in the intensity of the use that could adversely impact adjacent property;
 - (c) The change does not exceed the limits or violate any specific conditions of the original approval; and
 - (d) The change complies with all other provisions of this code, including the Site Plan procedures and criteria in 24-207.

Any other changes to the use shall require an amendment to the use by special review through the same procedures and criteria as the original application
 4. A use by special review may be revoked by the Planning Commission through the same procedures granting the use, upon a finding that the conditions of approval have not been met, or that the use has otherwise violated the provisions of this code.

24-207 Site Plan

- a. **Applicability.** The site plan process provides review of development projects that propose a change to buildings and sites that may impact the relationship to the streetscape or adjacent property, or may include a change of use or activity on the site. It ensures that projects meet the development and design standards of this code, and coordinates projects with surrounding development patterns and public spaces, including compatible arrangement of buildings, pedestrian and vehicle access, site design, lighting and landscape design. Site plans may be initiated by the property owner.

The site plan process specifically applies to reviews prior to any of the following:

1. Any building or site improvements;
 2. A grading or building permit; or
 3. A change of use.
- b. **Review Criteria.** In general, any site plan in compliance with all applicable standards of this code shall be approved. In making a determination of compliance with the standards applied to

particular site, or exercising any discretion under the standards, a site plan shall be reviewed according to the following criteria:

1. **Generally.**
 - (a) The plan meets all applicable standards or the criteria for any discretionary approvals.
 - (b) The plan does not substantially undermine any goals or objectives of the Comprehensive Plan that are applicable to the area or to the specific project.
 - (c) The plan does not present any other apparent risks to the public health, safety or welfare of the community.
 2. **Site Design and Engineering.**
 - (a) The plan provides safe access and internal circulation considering the site, the block and other surrounding connections, and appropriately balances vehicle, bicycle and pedestrian needs for the context.
 - (b) The plan provides or has existing capacity for utilities and other required improvements to serve the proposed development.
 - (c) The plan provides adequate management of storm water runoff.
 - (d) The plan provides proper grading considering prevailing grades and the relationship to adjacent sites.
 3. **Landscape and Open Space Design.**
 - (a) The plan creates an attractive aesthetic environment and improves relationships to the streetscape or other nearby public, civic or common spaces.
 - (b) The plan enhances the environmental and ecological functions of un-built portions of the site, and makes effective use and conservation of water resources.
 - (c) The plan reduces the exposure and adverse impact of more intense activities or components of the site or building on the streetscape and on adjacent properties.
 4. **Building Design.**
 - (a) The location, orientation, scale and massing of the building creates appropriate relationships to the streetscape and to adjacent properties.
 - (b) The selection and application of materials will promote proper maintenance and quality appearances over time.
 - (c) The location, fixtures and types of building and site lighting promotes creates aesthetic enhancements, promotes safety and security, and accounts for sensitive borders with the right-of-way or adjacent property
 - (d) The building reinforces the character of the area and reflects a compatible architectural relationship to adjacent buildings. Specifically, if there is any consistency or commonality in the scale, proportion, forms and features, and materials of adjacent buildings, they inform choices on the proposed building.
- c. **Review Procedure.** In addition to the general requirements in Table 24--1 and Section 24-201, the following requirements are specific to site plan applications:
1. At the applicant's discretion, and as part of the pre-application steps, the applicant may present a preliminary or conceptual site plan. This may be used to confirm interpretations, test basic concepts and standards, or review options for a proposed project.
 2. Any requests for alternative compliance or a variance from the standards are distinct applications, but may be coordinated with the Site Plan review as provided in Sections 24-208 and 24-209.
 3. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.

4. The Director may determine that any application meeting these eligibility criteria still presents significant change or potential impacts on the area, or presents substantial interpretation questions on the application of development standards or review criteria. The Director may forward the application to the Planning Commission for a decisions according to the criteria in this Section.
- d. **Effect of Decision.** Approval of a site plan shall be valid and create a vested property right for 1 year, and authorize the applicant to apply for a building permit and all other applicable permits. The decision may be appealed to the Planning Commission. The Director may grant one extension for up to 1 additional year. Failure to obtain permits, or otherwise achieve substantial completion of improvements or commence the use within this time frame shall cause the approval to expire.

24-208 Alternative Compliance

- a. **Applicability.** The alternative compliance process provides limited flexibility in the application of design standards so that the best design solution may be applied to a particular context or site. . It ensures that projects meet the intent and design objectives of the standards of this code, but allows for relief from strict application of the standards where an equal or better design solution is possible. Alternative compliance shall not reduce requirements of this code, but provide equivalent standards applied in a site-specific or creative way. Alternative compliance applications may be initiated by the property owner.

Specifically alternative compliance shall be applicable for any of the following:

1. Residential design standards in Section 24-503;
 2. Non-residential design standards in Section 24-603;
 3. Access and parking standards in Chapter 7;
 4. Landscape standards in Chapter 8; and
 5. Sign standards in Chapter 9.
- b. **Review Criteria.** The following criteria apply to any application that is proposing alternative compliance to any of the standards.
 1. The alternative shall not alter any use standard, and deviation from any dimension or quantity standard shall be limited to 10%, except where specific sections authorize greater deviations. The Redevelopment Area established in Section 24-1007, shall not be limited in the extent of alternative compliance that may be considered.
 2. The alternative shall be based on specific conditions of the site that make the applicable standard impractical, or where compliance with the standard would not clearly advance the intent and design objective of the standard.
 3. The proposed alternative shall equally or better meet the intent or design objective of the particular standard.
 4. The alternative shall not have negative impacts on the adjacent sites, and otherwise affect adjacent sites in a similar way as would otherwise occur by complying with the standard.
 5. The alternative shall not undermine any other planning policy or design goals applicable to the site or general area.
 6. The alternative shall not be strictly for the convenience of a specific project, but is justified under any of the following broader community benefits:
 - (a) aesthetic considerations that permit better coordination with the established character of the specific area;
 - (b) improved environmental performance;
 - (c) enhanced pedestrian amenity of civic spaces;

- (d) adaptive reuse of existing buildings or infill on existing lots that otherwise would likely not occur;
 - (e) better serves public health and safety considerations; or
 - (f) more directly advances any official city-approved plans or policies applicable to a particular area.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to site plan applications:
 - 1. Applications for alternative compliance may be submitted independently in advance of a site plan, provided there is sufficient information to evaluate the application according to the criteria. Alternatively, an application for a alternative compliance may be submitted with a site plan, provided that specific standards for which alternative compliance is proposed are clearly called out as a separate issue and decision in the application materials.
 - 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.
 - 3. Any request for alternative compliance associated with another application that requires approval of another review body, may be approved by the Director conditioned on final approval of the associated application. The alternative compliance shall be noted in the associated application and either affirmed or denied by the review body according to the criteria of the associated application.
- d. **Effect of Decision.** Approval of alternative compliance shall be indicated by a written statement of the Director. It shall authorize deviation from the standards only to the extent demonstrated on the approved plans. The written statement of approval shall be included with a subsequent submitted site plan, or if associated with a site plan application clearly called out distinct from the site plan submittal. The approval shall only be valid for one year from the written statement, unless a complete site plan application is submitted, in which case the alternative compliance approval shall remain valid in association with the site plan submittal. The Director may grant an extension of up to 6 months provided the conditions affecting approval of the approval have not significantly changed. Denial of alternative compliance may be appealed to the Planning Commission.

24-209 Variance

- a. **Applicability.** A variance is a process to provide relief from a strict interpretation of the zoning and development standards of this code, which when applied to a particular property and in a specific context would create practical difficulties or unnecessary hardship on all reasonable use of the property. This application shall only apply to the design, dimension, and other site development standards of this code and shall not be used to authorize a use that is prohibited by the applicable zoning district. Variances may be initiated by the property owner.
- b. **Review Criteria.** A variance shall be reviewed and approved only on the finding by the Zoning Board of Appeals that the following conditions are met:
 - 1. The strict application of this code would result in practical difficulties or unnecessary hardships that limit the reasonable use of the property without granting the variance.
 - 2. The difficulty or hardship is caused by conditions on the property that are unusual or atypical, are not are result of general conditions in the area, and were not created by the applicant.
 - 3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.

4. Granting the variance will not adversely affect the public health, safety, or general welfare.
 5. Granting the variance is consistent with the Land Use Chapter of the Comprehensive Plan and area or neighborhood plans, or may achieve greater consistency with these plans than if the codes were strictly applied.
 6. Granting the variance does not undermine the purposes and intent of this code, and is consistent with the specific intent or design objectives of the provision for which the variance is sought.
 7. The requested variance is the minimum necessary to relieve the difficulty or hardship and permit reasonable use of the property.
- c. **Minor Variance Procedures.** The Director may approve minor variances subject to the following:
1. Applications for minor variances may be submitted independently in advance of a site plan, provided there is sufficient information to evaluate the application according to the criteria. Alternatively, an application for a minor variance may be submitted with a site plan, provided the need for the variance is clearly called out as a separate issue and decision in the application materials.
 2. Mailed notice shall be provided to all abutting property owners, allowing up to 15 days for the owners to object. Any objections shall require the variance to be processed with the Zoning Board of Appeals according to the rest of this Section.
 3. Minor variances shall be limited to the following circumstances:
 - (a) Variance to a setback, building location, or building height requirement by up to 10% of the requirement. Where this would be less than 1 foot, the Director may approve a variance up to 1 foot.
 - (b) Variance to a lot or open space area or dimension requirement of up to 5% of the requirement.
 - (c) Variance to a building coverage requirement by up to 10% of the requirement.
 4. The Director's decision shall be based on the criteria in Section 24-209.b.
- d. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to variance applications not eligible for minor variances:
1. Applications may be accompanied by a site plan where it is necessary to review conformance with standards of this code and the variance criteria.
 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall schedule review by the Zoning Board of Appeals.
 3. Approval by a majority of the Board present shall be necessary to grant a variance.
 4. In granting a variance, the Board may impose conditions and requirements that best assure the criteria for approval are in place and maintained, and any violation of these conditions shall be considered a violation of the ordinance.
- e. **Effect of Decision.** Upon approval of a variance, a Certificate of Variance Approval shall be recorded for the subject property by the Director in the Weld County Clerk and Recorder's Office. Upon filing, the applicant may proceed with any necessary approvals or permits authorized in the variance. Any variance not filed and acted upon within 12 months shall expire and no further action is permitted. The Director may grant an extension of up to 6 months provided the conditions affecting approval of the variance have not significantly changed. Denial of a minor variance by the Director may be appealed to the Zoning Board of Appeals. Denial of a variance by the Board of Zoning Appeals may be appealed to the City Council.

24-210 Appeal of Administrative Decision

- a. **Applicability.** The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City. Except for where this Chapter and Table 24-2-1 establish a different appeal process for specific applications, appeals of administrative decisions may be filed with the Zoning Board of Appeals. Appeals may be filed by any person aggrieved and materially affected by a final decision of an administrative official, or by any officer, department, board, or official public body of the City. Appeals of administrative decisions shall be filed in writing with the Community Development Department within 10 days of the date of the decision being appealed.
- b. **Effect of Filing.** An appeal halts all proceedings in furtherance of the decision appealed from unless the official making the decision certifies to the Board that it could cause imminent peril to life or property. In such case, the Board may elect to allow the official to continue proceedings in furtherance of the decision while the appeal is pending a final decision of the Board.
- c. **Notice.** Notice of the appeal shall be served upon the person whose decision is being appealed by providing a copy of the appeal. The administrative official whose decision is being appealed shall transmit to the Zoning Board of Appeals all plans, applications and other files directly impacting the decision and constituting the official record upon which the action appealed is taken within 10 days of receipt of such filing of the appeal. If the appeal is based on an application that required any other notice under this code, notice of the appeal shall also occur as required by the original application.
- c. **Action and Review Criteria.** The Zoning Board of Appeals shall grant the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. A majority vote of the Board present shall be necessary to sustain an appeal. An appeal shall be sustained only upon written findings that the official was in error. In exercising the appeal power, the Board shall have all the powers of the official from whom the appeal is taken, and the Board may reverse or affirm wholly or partly or may modify the decision being appealed.
- e. **Effect of Decision.** The decision by the Zoning Board of Appeals shall have the same effect as a decision made by the administrative official but shall be limited to the facts and circumstances of that particular case. The Director may use the Zoning Board of Appeals decision on an appeal as a factor when applying the standard appealed from to other similar circumstances. Any person aggrieved by a final decision of the Zoning Board of Appeals may appeal City Council according to Table 24-2-1 and Section 24-201.i.

24-211 Code Amendments

- a. **Applicability.** Amendments to these regulations may be initiated by the City Council or the Planning Commission, or by Staff on behalf of these entities.
- b. **Review Criteria.** A code amendment shall be reviewed according to the following criteria:
 - 1. The amendment furthers the purposes of these regulations in Section 24-101.c.
 - 2. The amendment is in accordance with the Comprehensive Plan and has been considered for both its long-range affects as well as immediate impacts.
 - 3. The amendment promotes the public safety, health and general welfare of the citizens of Greeley.
 - 4. The amendment improves the effectiveness and efficiency of administering the Land Development Code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to text amendment applications:
 - 1. Applications may be accompanied by a related Comprehensive Plan amendment, or more specific plan, provided the amendment or plan has met all of the legal and policy requirements for plan approvals independent of the proposed code amendment.
 - 2. All amendments shall first require the recommendation of the Planning Commission. The City Council may recommend the application be returned to Planning Commission for further study or additional information at its next regular meeting. Failure by the Planning Commission to consider or revise its recommendation shall be considered a resubmission of its original recommendation.
 - 3. The Planning Commission may recommend or City Council may approve a lessor change than was proposed in the notice, when considering the proposed change relative to the currently applicable standards.
- d. **Effect of Decision.** Amendments to the text of these regulations shall be approved by the City Council in the form of an ordinance and be effective after the date specified in the ordinance. The Director shall incorporate approved amendments into this code by reference to the specific amending ordinance, and indicate the newly applicable provisions and the replaced provisions, or by recodification of the official code, that incorporates the approved amendment.

24-212 Dedication & Vacation of Easements

- a. **Applicability.** Dedication and vacation of easements is used to officially record or eliminate easements granting specific access and property interests stated in the recorded document. Easements may be dedicated or vacated in association with a minor or major subdivision, or by this section. Eligible applicants for dedication of easements include anyone with a property interest in the abutting and underlying land, and eligible applicants for vacations are only the easement holder.
- b. **Review Criteria.** The following criteria apply to dedication and vacation of easements:
 - 1. All legal pre-requisites for recording or eliminating the property interest have been established, and all forms and fees required by the City have been submitted.



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2. The applicant has established written evidence of ownership, and provided notice to all other ownership interests in the easement or affected property.
 3. The application will not be detrimental to any adjacent property owner, and no owner or entity with a property interest in the easement has objected.
 4. All parties in interest or potentially impacted by the application, and any agencies or city departments with an interest, have received notice and have had time to comment.
 5. For a vacation, there is no public purpose for the easement, considering the Comprehensive Plan, any specific transportation, open space or other public facilities plans, or other plans or policies under those plans.
 6. The application meets all other procedures and requirements of the Colorado Statutes, the Colorado Constitution, and the municipal code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to dedicating or vacating easements:
1. The applicant shall submit a plat or other legal document showing the specific property rights to be vacated or dedicated, and the affect to adjacent or abutting property.
 2. The Director shall coordinate review of the application per Section 24-201.f., and in particular determine whether any referral agencies who may have facilities or other interest in the easement or right-of-way should be notified, or if all potentially affected property owners have been notified.
 3. The Director shall sufficient time from notice for necessary referral agencies to comment, or require consent forms from any affected parties. The Director may extend this time period where the nature of the application or caseloads warrant further consideration from referral agencies, city departments, or other interested parties.
 4. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall make a final decision.
- d. **Effect of Decision.** After approval of an easement dedication or vacation, the Director shall record the plat or other legal document with the Weld County Clerk and Recorder's Office. A denial of a vacation or dedication application may be appealed to the Planning Commission.

24-213 Dedication & Vacation of Rights-of-Way

- a. **Applicability.** Dedication and vacation of rights-of-way is used to officially record or eliminate rights granting specific access and property interests stated in the recorded document, which are not associated with a major subdivision process. Eligible applicants include the City or an abutting and underlying property owner. For any right-of-way abutting multiple property owners, the City may require that all owners join in the application.
- b. **Review Criteria.** The following criteria apply to dedication and vacation of rights-of-way:
1. All legal pre-requisites for recording or eliminating the property interest have been established, and all forms and fees required by the City have been submitted.
 2. The applicant has established written evidence of ownership of property abutting or underlying the right-of-way. Where multiple properties are involved each owner shall be joined in the application
 3. The application will not be detrimental to any adjacent property owner, and no owner or entity with a property interest in the easement has objected.
 4. All parties in interest or potentially impacted by the application, and any agencies or city departments with an interest, have received notice and have had time to comment.

5. For a vacation, there is no public purpose for the right-of-way, considering the Comprehensive Plan, any specific transportation, open space or other public facilities plans, or other plans or policies under those plans.
 6. For a dedication, the right-of-way will serve a public purpose and the dedication is sufficient to meet the design standards and specifications of Chapter 3 for streets, trails or other rights-of-way.
 7. The application meets all other procedures and requirements of the Colorado Statutes, the Colorado Constitution, and the municipal code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to vacating rights-of-way or easements:
1. The applicant shall submit a plat or other legal document showing the specific property rights to be vacated or dedicated, and the affect to adjacent or abutting property.
 2. The Director shall coordinate review of the application per section 24-201.f., and in particular determine whether any referral agencies who may have facilities or other interest in the right-of-way should be notified, or if all potentially affected property owners have been notified.
 3. The Director shall allow sufficient from notice for necessary referral agencies to comment, or require consent forms from any affected parties. The Director may extend this time period where the nature of the application or caseloads warrant further consideration from referral agencies, city departments, or other interested parties.
 4. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall schedule review by the Planning Commission.
 5. The Planning Commission shall consider the application subject to the review criteria and make a recommendation to the City Council.
 6. Upon receipt of a recommendation from the Planning Commission, the City Council shall make a final decision, and may condition a decision to vacate right-of-way on reserving any interest it determines necessary to serve a public purpose or the interests of the affected property.
- d. **Effect of Decision.** After approval of a right-of-way dedication or vacation, the City Clerk shall record a copy of the scale drawing or illustration and legal description in the Weld County Clerk and Recorder's Office.

24-214 **Annexation**

- a. **Applicability.** The annexation process is to add unincorporated lands to the municipal boundaries, and consider well-ordered development of the City, and the extension of municipal services and facilities in an efficient, and effective manner. Annexation applications may be by petition of the land owners or at the initiation of the City Council.
- b. **Review Criteria.**
1. *General Eligibility.* The City Council may consider an annexation petition for land that satisfies the eligibility requirements of the statutes of the state as follows:
 - (a) The area proposed for annexation has not less than one-sixth of its perimeter contiguous with the municipal boundaries; and
 - (b) A community of interest exists between the area proposed for annexation and the City; the area is urban or will be urbanized in the near future; and the area is integrated with or is capable of being integrated with the annexing municipality.



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- (c) The full width of all public rights-of-way adjacent to a proposed annexation shall be included in the annexation.
 - (d) The responsibility to apply for exclusion from any applicable special districts shall be upon the applicant of the annexation.
 - (e) Annexations of enclaves may be initiated by the City Council when such enclaves have been completely surrounded by property within the municipal limits for a period of at least three years.
- 2. **Specific Criteria.** The Planning Commission and City Council shall evaluate annexations according to the following criteria:
 - (a) The proposed annexation is in conformance with the City's Comprehensive Plan;
 - (b) The proposed annexation promotes geographical balance of the City's land use pattern;
 - (c) Adequate services are or will be available to support the development expected to result from the proposed annexation, in accordance with Section 24-305.
 - (d) The proposed annexation provides for a continual and rational boundary; and
 - (e) The proposed annexation is needed to accommodate future land use requirements.
- c. **Review Procedures.** In addition to any specific procedure required by the laws of the state at the time of annexation, and in accordance with the general procedures applicable by Table 24-2-1 and Section 24-201, the following specific procedures apply to annexations:
 - 1. **Petition for Annexation.** The petition shall be signed by persons comprising more than 50% of the landowners in the area and owning more than 50% of the land area. Sample petitions are available from the Community Development Department.
 - 2. **Annexation Elections.** As an alternative to an annexation petition, the qualified electors of the area being proposed for annexation may petition the City Council to hold an annexation election.
 - (a) The petition for annexation election shall be signed by at least 75 qualified electors or 10% of the electors, whichever is less, or as otherwise required by state statutes.
 - (b) The petition shall be filed with the City Clerk and shall comply with the provisions of the state statutes.
 - (c) If the petition for annexation election is in substantial compliance with state statutes, the City Council shall call for an election to be held. Notice of such election shall be given by the City Clerk.
 - (d) If a majority of the votes cast are against annexation, or the vote is tied, the annexation proceedings to date will be voided and considered of no effect and the City Council shall proceed no further with the annexation proceedings.
 - (e) If a majority of the votes cast at the election are for annexation, the City Council may thereafter annex the area.
 - 3. **Application.** Application form and related application fees, including all additional plans and details required on the forms shall be provided by the applicant.
 - 4. **Request for Zoning.** The applicant shall submit a request for zoning in accordance with this section and Section 24-204, Rezoning or Section 24-205 Planned Unit Development. The Community Development Director shall conduct an analysis of existing land uses on

the subject property to ascertain zoning and lawfully established nonconforming uses. Nonconforming uses shall be permitted to continue, as provided in Section 24-105.

5. *Staff and Agency Review.* The Director shall coordinate review of an application with all necessary reviewing agencies, and allow them two weeks from the date of distribution of the annexation plat and supporting documents to make any objections or comments to the Community Development Director. This time period may be extended to the minimum period needed to complete the review.
6. *Resolution to Consider Annexation.* The City Council shall determine whether to proceed with annexation of property by resolution which shall include the public hearing date and, at the same time, shall determine if an annexation agreement will be required.
7. *Annexation Impact Report.* For annexations of areas larger than ten acres, the City shall prepare an impact report concerning the proposed annexation. The report shall be prepared at least 25 days prior to the date of the City Council's hearing on the proposed annexation, and a copy of the report shall be filed with the Board of County Commissioners governing the area proposed to be annexed within five days after preparation of the report. The annexation impact report shall contain the following information at a minimum:
 - (a) A map or maps of the municipality and adjacent territory to show the following:
 - (1) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;
 - (2) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and
 - (3) The existing and proposed land uses in the areas to be annexed.
 - (b) A copy of any draft or final annexation agreement, if available;
 - (c) A statement on plans of the City for extending and providing municipal services at the time of annexation;
 - (d) A statement on the method to finance the extension of the municipal services into the area to be annexed;
 - (e) A statement identifying existing districts within the area to be annexed; and
 - (f) A statement on the effect of annexation upon local public school district systems, including the estimated number of students generated and the capital construction required to educate students.
8. *Planning Commission Hearing.* The Planning Commission shall hold a public hearing on the annexation. In making a recommendation on an annexation, the Planning Commission shall consider the review criteria in this Section, any comments received from agencies or offices receiving copies of the annexation plat, the staff recommendation and any comments received from citizens.
9. *City Council Hearing.* The City Council shall hold a public hearing on the annexation. In taking action on an annexation, the City Council shall consider the review criteria in this Section, any comments received from agencies or offices receiving copies of the annexation plat, the staff and Planning Commission recommendations and any comments received from citizens.



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- d. **Effect of Decision.** If the annexation is approved, the Community Development Director shall cause a copy of the signed annexation plat to be recorded in the Weld County Clerk and Recorder's Office. Annexed areas shall be included in the City's zoning ordinance and map within 90 days after the effective date of the annexation ordinance, except that the proposed zoning ordinance shall not be passed on final reading prior to the adoption of the annexation ordinance. The City shall consider zoning such newly annexed areas under the appropriate zoning category as follows:
1. If land use approval or development of areas being considered for annexation is not pending upon completion of annexation, if the subject property is in a transitional state regarding development or if it is in the best interest of the City, the City Council shall place the newly annexed property into the H-A Holding Agriculture Zoning District.
 2. Requests for zoning districts other than the H-A Holding Agriculture District may be considered by the City Council in conjunction with the submittal of all applicable requirements for a rezoning application. The City Council shall place the newly annexed property into the zoning district most appropriate, considering the goals and objectives of the City's Comprehensive Plan and the applicant's future development plans.
 3. Requests for zoning to the C-D Conservation District shall be exempt from the requirements of Subsections a. and b. above.
 4. Property which does not have an approved Development Plan per Section 24-205.b. or other land use or development plan per Section 24-204.c.5.(a), and does not develop within three years from the effective date of this Section shall be required to submit plan prior to, or in conjunction with, subdivision or site development.
 5. During the time in which zoning of newly annexed areas takes place, the City may refuse to issue any building or occupancy permit for any portion or all of the newly annexed area.

Reserved Sections 24-215 through 24-300

PLANNING COMMISSION SUMMARY

ITEM: Amending Title 24 of the 2021 Greeley Municipal Code to Recommend Approval of Chapter 1 – General Provisions and Chapter 2 – Procedures to be Adopted by Ordinance

PROJECT: Title 24 – Chapter 1 – General Provisions
Title 24 – Chapter 2 - Procedures

FILE NO: Title 24 – Chapter 1 - CU2021-0002 & Title 24 – Chapter 2 - CU2021-0003

LOCATION: (not applicable)

APPLICANT: City of Greeley, Community Development Department

CASE PLANNER: Carol Kuhn, AICP, Chief Planner

PLANNING COMMISSION HEARING DATE: May 18, 2021, continued from May 11, 2021

PLANNING COMMISSION FUNCTION:

The Planning Commission shall consider the staff report, along with testimony and comments made by the staff and the public, and shall then make recommendations to the City Council regarding the proposed amendment to the Development Code.

PROJECT OVERVIEW AND BACKGROUND:

The Community Development Department is undertaking a multi-year project to update the Development Code, with an anticipated final adoption in September of 2021. The last major update to the Development Code was in 1998. A Plan Conformance Report was prepared and used as a guide to determine areas where the code could be improved to conform to the Comprehensive Plan and other policy documents; staff reviewed this report with the citizen Advisory Committee, Planning Commission, and City Council.

The Development Code, Title 18 of the City’s Municipal Code, was recently recodified into Title 24 as part of a citywide initiative. Title 18 did not have a formal Chapter 1 – General Provisions. However, the new Title 24 has been revised through the recodification process to include a Chapter 1. This recodification process included relocating various sections contained in the existing code related to provisions to create Chapter 1.

A more substantial Chapter 1 which sets general provisions for use and interpretation of the Development Code was prepared as part of the overall Development Code Update. Chapter 1

discusses the relationship of the Development Code to the City's Comprehensive Plan and other plans and studies, a methodology to interpreting the Development Code, the overall administration and enforcement of the code, and methods for handling non-conforming uses, structures, and lots.

Chapter 2 – Procedures defines the City's procedures for processing land use applications and includes these key provisions:

- The addition of a Procedures Summary Table;
- A new requirement for Preliminary Plats to be approved through a public hearing, rather than a public meeting;
- Clarifications regarding processing concurrent applications;
- Modifications to public notice procedures;
- Clarifications between various types of minor subdivision applications;
- The addition of a Condominium Plat process;
- The separation of platting from Planned Unit Development (PUD) applications;
- Simplification of PUD process – now one step, rather than two;
- Clarification regarding the required plan elements of a PUD;
- The addition of criteria for minor PUD amendments;
- Clarification regarding review criteria for Alternative Compliance, with approval of Alternative Compliance being moved to an administrative decision with a call-up provision;
- Removal of Design Review Applications;
- Revisions to require variances to meet all criteria, rather than some; and
- Revisions to minor variance thresholds.

On March 23, 2021 and April 27, 2021, Staff conducted worksessions with the Planning Commission regarding the proposed revisions for Chapters 1 and 2 and presented Planning Commission with draft code language during the worksessions.

On April 13, 2021, Planning Commission recommended that the revisions to Chapter 1 be accepted. Since that hearing, Council's code adoption process was revised, which requires that the revised code chapters be adopted, rather than accepted. This new approach requires Chapter 1 be brought back to Planning Commission with a revised motion for a new recommendation to Council, along with a motion and recommendation for adoption of Chapter 2. Both Chapters 1 and 2 will be heard by Council together and this revised recommendation will allow Chapters 1 and 2 to align with the Council adoption schedule.

Worksessions and discussions for Track III changes have been conducted. The table below outlines the key topics of the Track III discussions:

Advisory Committee	Planning Commission	City Council
✓ December 14, 2020 (Missing Middle)	✓ December 15, 2020 (Housing Options)	✓ January 12, 2021 (Housing Options)

Advisory Committee	Planning Commission	City Council
✓ February 24, 2021 (Recap & Small-Format)	✓ March 9, 2021 (Project Status & Infill Strategies)	✓ February 23, 2021 (Small-format Housing)
✓ March 10, 2021 (Infill Strategies)	✓ March 23, 2021 (Chapters 1 & 2) (Track I)	✓ March 9, 2021 (Infill Strategies)
✓ April 1, 2021 & April 7, 2021 (Placemaking)	✓ March 30, 2021 (Placemaking)	✓ April 13, 2021 (Placemaking)

The proposed schedule for the adoption of the Development Code is as follows:

Track	Chapter(s)	PC Worksession	PC Hearing	CC Public Hearings
Track I - Non-substantive changes for organization and improved usability.	Ch 1 – General Provisions	March 23, 2021	April 13, 2021	June 1, 2021 (First Reading)
	Ch 2 - Procedures	April 27, 2021	May 11, 2021	June 15, 2021 (Public Hearing)
				September 21, 2021 (Final Adoption)
Track II - Non-policy technical changes and coordination with other City policies and documents.	Ch 7 – Access & Parking	May 25, 2021	June 8, 2021	July 6, 2021 (First Reading)
	Ch 8 – Landscape & Site Design Standards			July 20, 2021 (Public Hearing)
	Ch 9 – Signs Ch 10 – Special Purpose Districts & Areas Ch 11 – Supplemental Standards Ch 12 - Reserved			September 21, 2021 (Final Adoption)
Track III - Substantive changes called for in the Comprehensive Plan, Strategic Housing Plan, and Council's 3-Year Priorities that need	Ch 3 – Subdivision Standards	June 22, 2021	July 27, 2021	August 3, 2021 (First Reading)
	Ch 4 – Zoning Districts & Uses			August 17, 2021 (Public Hearing)
	Ch 5 – Neighborhood Development & Design Standards Ch 6 – Non-residential			September 21,

Track	Chapter(s)	PC Worksession	PC Hearing	CC Public Hearings
broader input and direction from the Advisory Committee, Planning Commission, and City Council.	Development Standards Ch 13 – Definitions			2021 (Final Adoption)

KEY ISSUES / STAFF ANALYSIS:

The attached drafts of Chapter 1 – General Provisions and Chapter 2 – Procedures include updates to the interpretation, administration, and enforcement portions of the Development Code and includes the following sections:

Chapter 1 – General Provisions

- Section 24-101 Overview
- Section 24-102 Interpretation
- Section 24-103 Administration
- Section 24-104 Enforcement
- Section 24-105 Nonconformities

Chapter 2 includes revisions and updates to the various application types and processes and includes the following sections:

Chapter 2 - Procedures

- 24-201 General – All Applications
- 24-202 Minor Subdivision
- 24-203 Major Subdivision
- 24-204 Rezoning
- 24-205 Planned Unit Development
- 24-206 Use by Special Review
- 24-207 Site Plan
- 24-208 Alternative Compliance
- 24-209 Variance
- 24-210 Appeals of Administrative Decision
- 24-211 Code Amendments
- 24-212 Vacation & Dedication of Easements
- 24-213 Vacation & Dedication of Right-of-way
- 24-214 Annexation

Staff has provided a section map for Chapters 1 and 2 (Attachments B & D) which outline the various sections in the existing Title 18 (to be recodified as Title 24) compiled to create Chapters 1 and 2.

NOTICE AND COMMENTS:

Notice has been published in the Greeley Tribune on May 5, 2021, pursuant to the City's notification requirements for revisions to the Development Code.

The drafts of Chapters 1 and 2 were posted on the City's website. No comments on were received.

PLANNING STAFF RECOMMENDATION: Approval

PLANNING COMMISSION RECOMMENDED MOTION:

Based on the project summary and attached drafts of Chapters 1 and 2, the Planning Commission finds that the proposed revisions to Chapter 1 and 2 are consistent with the City's Comprehensive Plan and are necessary and appropriate in meeting the intent of the Comprehensive Plan and to clarify administration of the Development Code. Planning Commission recommends that the City Council adopt Chapters 1 and 2 of Title 24 as shown in Attachments A and C.

ATTACHMENTS:

Attachment A – Draft - Chapter 1

Attachment B – Section Map for Chapter 1

Attachment C – Draft – Chapter 2

Attachment D – Section Map for Chapter 2

Chapter 1. General Provisions

Section 24-101	Overview
Section 24-102	Interpretation
Section 24-103	Administration
Section 24-104	Enforcement
Section 24-105	Nonconformities

24-101 Overview

- a. **Title.** This Title 18 is known as the Greeley Development Code. References to “this code,” “the development code,” or “these regulations” shall be considered a reference to the Greeley Development Code.
- b. **Authority.** The development code is enacted pursuant to the purposes and authority granted by Article XX of the Colorado Constitution and the Greeley Charter, independent of and in addition to the Colorado Revised Statutes, Title 31, Article 23 Planning and Zoning. This Title also supersedes any state legislative enactments which are, by their terms, subject to being superseded by adopted home rule city charters or ordinances.
- c. **Jurisdiction.** The Greeley Development Code applies to all structures and land within the incorporated area of the City of Greeley, as depicted on the official zoning map, and other maps accompanying the City’s plans and policies. It shall be unlawful to conduct any development or use of land until all specified development review processes have been followed, all applicable standards have been fulfilled, and all required approvals, permits or other authorizations have been issued.
- d. **Purposes.** This development code is adopted to promote the public safety, health, and general welfare for the City of Greeley and its citizens and businesses. Specifically, the regulations have the following purposes:
 1. Implement the Comprehensive Plan, and other plans and programs authorized under the guidance of the Comprehensive Plan.
 2. Promote the physical, social, and economic well-being of residents and businesses, the long-term value and viability of public investments, and individual property values by balancing the co-equal rights of property owners.
 3. Invest public funds effectively and efficiently, and in a manner that creates lasting value for the community.
 4. Promote planning and urban design that emphasizes distinct places and unique elements of community character throughout Greeley.
 5. Provide parks, trails, and civic spaces that help organize development around systems of connected open spaces and emphasize significant natural landscapes
 6. Secure proper arrangement and design of streets to shape efficient development patterns, coordinate with existing and planned streets, create multi-modal networks, improve access and circulation, and support abutting land uses.

7. Divide the city into zones and districts that promote the character and development patterns of distinct places identified in the Comprehensive Plan.
8. Regulate and restrict the development and use of buildings and land within each zoning district to create a compatible scale and range of building types within districts, and to promote the appropriate transitions to adjacent property and to supporting districts.
9. Provide a variety of housing opportunities for all residents and citizens.
10. Secure adequate provisions for transportation, water, drainage, sanitary sewer facilities, utilities, and other public improvements in coordination with development.
11. Protect the natural environment and conserve environmentally sensitive lands by directing new development into areas with few natural or environmental constraints and mitigating adverse impacts when developing in sensitive areas.
12. Allow for the removal of minerals prior to development.
13. Ensure fair consideration of development applications through clear and consistent procedures.
14. Provide for coordinated development of Greeley consistent with established policies of the City.

e. **Severability.**

1. If any court of competent and final jurisdiction declares any part of this development code to be invalid, that ruling shall not affect any other provisions of this development code not specifically included in that ruling.
2. If any court of competent and final jurisdiction declares that the application of this development code to a particular property or structure is invalid, that ruling shall not affect the application of the regulations to any other property or structure, or to development with different circumstances.
3. No provision of this code shall enable any circumstance that is unlawful under superseding federal or state law. If any section, subsection, sentence, clause, phrase, or portion of this code is now or in the future superseded or preempted by state or federal law, or found by a court of competent jurisdiction to be unauthorized, such provision shall be interpreted and applied as required by law.

f. **Transition Provisions.** This section shall be used to guide the transition from previously existing regulations. Unless specifically stated otherwise in this code, the following rules shall apply:

1. **Generally.** All standards in this code shall apply after the effective date of the ordinance adopting these standards, and all subsequent amendments shall become effective in the same manner.
2. **Applications.** Any official application submitted prior to the effective date of the ordinance adopting these standards, and determined a complete application by the Director, shall be reviewed and processed according to the prior standards and procedures. An application submitted prior to the effective date, but determined

incomplete, shall be resubmitted and processed according to the regulations in effect at the time of submittal of a complete application.

3. **Prior Approvals.** All permits, site plans, or other approvals issued under an administrative capacity prior to the effective date of this code shall remain effective for the duration specified with that approval or under the prior code as it existed on **[effective date.]**. If no date is specified, the duration of the most applicable approval under this code shall be used. Any changes or amendments to a prior approval requested after the effective date of this code shall be subject to all provisions of this code.
4. **Plats.** Any approved preliminary plat may continue to advance to final plat according to the standards, procedures and time limits of the prior code. Each subsequent approval of a final plat for a phased project may renew the validity of that preliminary plat for the duration specified in Section 24-203. However, a new preliminary plat shall be required subject to all provisions if:
 - (a) The preliminary plat expires under the conditions of the prior approval or the duration specified for preliminary plats in Section 24-203, whichever is sooner.
 - (b) A major amendment is proposed to the preliminary plat.
 - (c) Any final plat proposes a substantial change to the preliminary plat.
 Final plats submitted after the effective date of this code shall meet all provisions of this code, to the extent it is consistent with the approved preliminary plat.
5. **Continuation of Enforcement.** Any violations of a previously valid regulation that continues after adoption of this code may be enforced as provided by this code. The City may, in its discretion enforce either the previous regulation or the standards of this Code.

24-102 Interpretation

- a. **Rules of Construction.** The following rules shall apply to the application and interpretation of these regulations, unless the context clearly indicates otherwise:
 1. All words shall have the customary dictionary meaning, unless specifically defined in these regulations.
 2. The present tense includes the future tense and the future tense includes the present tense.
 3. The singular includes the plural and the plural includes the singular.
 4. Lists of examples prefaced by “including the following,” “such as,” or other similar clauses shall not be construed as exclusive or exhaustive, and shall not preclude an interpretation of the list to include other similar and non-mentioned examples.
 5. The conjunctive “and” in a list means that all apply; the conjunctives “or” and “and/or” mean the provisions may apply singly or in any combination; and the conjunctive “either...or” means the provisions apply singly but not in combinations.
 6. When calculations to determine a requirement results in fraction of physical elements that cannot be divided (i.e. parking space, trees, dwelling units), it shall be rounded up to the nearest whole number if the standard is expressed as a minimum requirement and rounded down to the nearest whole number if the standard is expressed as a maximum allowance.
 7. “Shall,” “will,” or “must” is mandatory; “should” or “may” is permissive but recommended as a way to best meet the standard or achieve the intent of the standard.
 8. A reference to an administrative official shall refer to that official, or his or her designee, and all references to specific city officials may also include any other designee of the City Manager.

9. Any reference to other official local, state, or federal government rules or regulations shall include the current versions of those regulations, provided they remain binding on the City, or where not binding, provided they remain consistent with the purposes, intent, and objectives included in these regulations.
 10. References to a person shall include individual, partnership, association, agency, corporation or other legal entity and the owners, tenants, occupants, principals, partners, officers, employees, agents and representatives of any legal entity.
- b. **Conflicts.** All provisions of this code shall be considered the minimum requirements to promote the public health, safety, and welfare. In case of a conflict between these regulations and any other adopted rule, regulation, or code, the higher and more restrictive standard shall apply. In making a determination of which standard is higher and more restrictive, the official may consider which is more specific; which is more recent; which is more consistent with the Comprehensive Plan; which is more consistent with the purposes, intent, and objectives of these regulations; and which best promotes the public health, safety, and welfare.
- c. **Computations of Time.** The following rules apply to any computation of time, unless a specific section of these regulations indicates otherwise:
1. The day of the act that commences a time period shall not be counted; for notice requirements the day of the hearing shall not be counted.
 2. The last day of the time period shall be included, unless it is a Saturday, Sunday or legal city holiday, in which case the next working day shall end the time period. In all other cases Saturday, Sunday or legal city holidays count in the time period.
 3. Whenever any time period is expressed for a formal submittal to the City, the time period shall end at midnight on the last day of that time period.
 4. Any time period expressed in years shall include a full calendar year from the act that commences the time period.
- d. **Interpretation of Zoning Map.** Where uncertainty exists with respect to any boundary on the zoning district map, the following rules shall apply:
1. Boundaries approximately following streets or other rights of way or rivers or streams - the centerlines or extension of these centerlines shall be the boundaries.
 2. Boundaries indicated as approximately following property lines - the platted or other official legal line of that property shall be the boundaries, unless the property boundaries on the map have been substantially altered.
 3. Boundaries approximately following city limits shall be interpreted as following the actual city limits.
 4. Boundaries that split any platted lots - the lot shall be interpreted in the district designated to the majority of the lot. In the case of an equal split, the Director shall determine the appropriate zoning based on consideration of the Comprehensive Plan, the context, the surrounding existing uses, and the likelihood of change in context or existing uses in the future.
 5. Boundaries that split any unplatted property - any future platting of property may generally follow the zoning boundary and then each resulting property may assume the zoning applicable to the majority of the resulting lot actual platted boundary, or where any resulting lots have significant discrepancies with zoning boundaries, rezoning may be required.
 6. Boundaries following a shoreline shall be interpreted to follow the shorelines and in the event of change in the shoreline, shall move with the actual shoreline.
- e. **Non-regulatory Provisions.** Intent statements, design objectives, graphics, and commentary such as captions to graphics or notes in tables, are an aid to interpretation of the standards and

criteria. In the event of any conflict between the intent statements, design objectives, graphics or commentary and a specific standard, the specific standard shall control.

- f. **Resources, Guides and Industry Standards.** Resources, guides, and industry standards that are recognized as a reputable authority in the planning, development, and urban design professions, may be used to supplement interpretation of this code. The Director shall make a determination on the applicability of a resource, guide or industry standard to a particular circumstance. These guides shall only be used to the extent that it clarifies or is more specific than the standards, and is consistent with the purposes, intent, and design objectives expressed in these regulations. These guides shall not be used to otherwise change or conflict with any specific standard in these regulations.
- g. **Official Interpretations.** In cases where there is uncertainty how this code applies to potentially recurring situations, the Director may make Official Interpretations.
 1. **Filing.** Official Interpretations shall be documented and kept on file with the Community Development Department, or otherwise made accessible to applicants facing similar circumstances.
 2. **Criteria.** In making an Official Interpretation, the Director shall use the following criteria:
 - (a) Sound professional planning and urban design principles.
 - (b) The Comprehensive Plan and any specific plans or policies created under the Comprehensive Plan.
 - (c) The purposes, intent, or design objectives applicable to this code and the specific chapter or sections related to the interpretation.
 - (d) Any resources, guides, or industry standards applicable to the specific situation.
 - (e) Based on the context of the street, block, site, or building, the interpretation is at least one reasonable way the standards could be applied.
 - (f) Whether the same interpretation could be applied to all similarly situated property or circumstances, and meet these criteria; or whether any conditions or limitations are necessary to ensure it meets the criteria.
 3. **Effect of Decision.** An approved Official Interpretation shall be effective upon approval by the Director and may apply to all similar situations unless:
 - (a) It is overruled or modified by a different Official Interpretation.
 - (b) It is overruled by appeal as provided in these regulations.
 - (c) It is amended or overruled by a text amendment to the section addressed by the statement.

24-103 Administration

- a. **Staff.** The following city staff positions are responsible for administering specific aspects of this code.
 1. **Community Development Director.** The Community Development Director (Director) is responsible for administration of the development code, and is the principal interpretation and enforcement official of these regulations. The Director may consult with any other department or relevant outside agencies in order to coordinate any plans, policies, and programs that impact the Comprehensive Plan. The Director shall specifically:
 - (a) Prepare and provide development application forms and administer the requirements and review of submittals;
 - (b) Oversee the application, review, and administration processes and prepare presentations and reports for review bodies;

- (c) Issue official interpretations and approve the use of other resources, guides, and industry standards used in administering this code.
 - (d) Make all final interpretations and any final administrative decision referred to the Director under the procedures and standards of these regulations.
- 2. **City Manager and Other Staff.** The City Manager is the chief executive and administrative officer for the City and may make any decision delegated to any city staff member under this code. All other department heads and staff may serve in an advisory role to the Community Development Director under this code, as designated by the City Manager.
- c. **Planning Commission.** The Planning Commission is the appointed body of the City responsible for all long-range and comprehensive planning, as well as review, recommendations and decisions on implementation of the Comprehensive Plan. The Planning Commission is established according to Section 19-1 of the Greeley City Charter. In addition to all other general planning authority granted by the Charter, statutes, local ordinances, the Planning Commission shall have the specific review responsibilities and final administrative decisions referred to the Planning Commission under the procedures and standards of these regulations.
- d. **City Council.** The City Council is the elected and governing body of the City responsible for all legislative decisions that affect implementation of the Comprehensive Plan. In addition to other general authority granted by law, the City Council shall have the appeal authority and final decision authority referred to the City Council under the procedures and standards of these regulations.
- e. **Zoning Board of Appeals.** In accordance with Article XIX of the City Charter, the City Council appoints the Planning Commission as the Zoning Board of Appeals. The Zoning Board of Appeals shall act in accordance with same rules and procedures as the Planning Commission but have the following specific authority under this code:
 - 1. Grant variances to the strict application of the standards in this code;
 - 2. Hear and decide appeals when an error is alleged in any final order or determination made by an administrative official in the interpretation or enforcement of this code;
 - 3. Consider any other matters referred to it under this code; and
 - 4. Otherwise act as the City's board of adjustments under the authority of C.R.S. 31-23-307.
- f. **Historic Preservation Commission.** The Historic Preservation Commission is established to have principal responsibility for matters of historic preservation, as specifically outlined in Section 10.03.
 - 1. **Membership.** The City Council may appoint the Historic Preservation Commission. The commission shall consist of 7 members. The make-up of the Commission shall be:
 - (a) One architect, landscape architect, design professional and/or licensed contractor or building tradesperson;
 - (b) One historian, archeologist and/or architectural historian;
 - (c) One licensed real estate broker; and
 - (d) Four citizens at-large.
 - 2. **Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:
 - (a) Recommend criteria and procedures for historic designation, recommend designation, or removal of specific properties or districts, and review proposals that impact designated properties as provided in Section 24-1004.

- (b) Oversee surveys that document structures and assess conditions of potential historic properties and areas, and inform landowners of properties that may meet criteria for designation.
- (c) Review and make a decision on any application for altering, moving, or demolishing any designated properties.
- (d) Advise and assist owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation, and reuse, including nomination to the National Register of Historic Places.
- (e) Develop and assist in public education programs, such as walking tours, brochures, and a marker program for historic properties, lectures, and conferences.
- (f) Advise the City Council on matters related to preserving the historic character of the city.
- (g) Assist in pursuing financial assistance for preservation-related programs.
- (h) Advise appropriate city departments on violations, enforcement and administration of Section 24-1004, Historic Preservation.

24-104 Enforcement

- a. **Violations.** It shall be unlawful for any building, structure, site element or use of land to be constructed, altered, maintained, or otherwise initiated in violation of these regulations. It shall be unlawful for any person to do or cause:
 - 1. Any act or thing prohibited by these regulations;
 - 2. Omit any act or thing required by these regulations; and
 - 3. Interfere in any manner with persons in performance of a right or duty granted or imposed by these regulations, maintained, or otherwise initiated in violation of these regulations.
- b. **Enforcement.** The City may investigate and initiate proper actions or proceedings to prevent or terminate any activity or condition that is in violation of these regulations, including withholding any permits or licenses, revoking or suspending any permits or licenses previously granted, issuing stop work orders, preventing the sale or lease of property, correcting or abating the nuisance, withholding any public improvements, or penalizing and initiating legal proceedings to prevent the continuance of unlawful actions or conditions.
- c. **Penalty.** Any and all violations of the provisions of this code shall be a code infraction and shall be subject to the sanctions for code infractions contained in Chapter 1.33 of the Greeley Municipal Code, and any other sanctions permitted under law. The City may seek and obtain remedies provided by law, including civil and administrative sanctions, temporary or permanent injunctive relief, and any other relief set forth in Chapter 1.33 of the Greeley Municipal Code.

24-105 Nonconformities

- a. **Intent.** The general policy of the City is to allow uses, buildings and lots that were created legally and in conformance with then-applicable requirements, but that do not conform to the current applicable requirements of these regulations, to continue to be put to productive use. However, it is the City's intent to bring as many aspects of these nonconformities into compliance with current regulations as is reasonably practical. The intent of this section is to balance the interests of property owners in past investments, discourage investment that expands or reinforces non-conforming situations, and promote investment consistent with the Comprehensive Plan and these regulations.

- b. **Nonconforming Uses.** Uses that were legally initiated prior to the adoption or amendment of this code, but which could not be established under the current terms of this code, may continue to exist subject to the following:
1. The use shall not be expanded beyond any specific area of the site or lot where it was legally established, beyond any existing building or structure, or within any building or structure where any structural changes expand the exterior footprint of the building or structure. The Director may consider an exception based on the following findings:
 - (a) The enlargement of the structure or buildings is only to facilitate a conforming uses or activities, and does not otherwise allow, encourage or promote expansion or increase impacts of the nonconforming use;
 - (b) The enlargement of the structure or buildings shall not result in conversion of the nonconforming use from a seasonal to a year-round operation or otherwise expand the time of operations; and
 - (c) The enlargement of the structure or buildings complies with all applicable development standards.
 2. If the use is reduced in intensity or abandoned for a period of twelve consecutive months, the property may not be used except at that lower intensity or as a conforming use.
 3. Any change of use shall be to a conforming use, and at this time the nonconforming use shall be abandoned. The Director may authorize a change to a lesser non-conforming use considering the extent, intensity, or operations of the use, provided it lessens impacts on adjacent property and it does not otherwise include investments that extend the period that the property is not conforming to this code.
 4. Any structure in which a non-conforming use is carried on that is damaged to the extent of more than 50% of the replacement value shall not be restored to support the non-conforming use.
 5. Any new activity that triggers specific site design standards shall require full compliance with that site design standard in order for the nonconforming use to continue, and the presence of a non-conforming use shall not be used to justify noncompliance with other applicable standards.
 6. A detached house used as a single-family dwelling in any district that does not permit single-family dwellings, may be enlarged, as long as the lot and building comply with all other base standards applicable to a similar building type.
- c. **Nonconforming Structures.** Structures that were legally constructed prior to the adoption or amendment of this code, but which could not be constructed under the current terms of this code, may continue to exist subject to the following standards. This Section shall not apply to signs, which shall address non-conforming situations as provided in Chapter 9.
1. Rehabilitation or expansion of the structure that increases the degree of nonconformity is prohibited. Other rehabilitation or expansions may occur provided that they comply with all other requirements of this code; are not detrimental to the purposes, intent and objectives of the standards; and do not negatively impact development in conformance with this code on adjacent property. In general, no repairs or alterations that cost more than 50% of the replacement value of the structure shall be permitted. The burden shall be on the applicant to produce evidence that the cost of the repair or alteration is less than 50% of the replacement value.

2. If damaged by 50% or less of its total replacement cost, the structure may be restored to its original condition if work obtains a permit and work is commenced within 180 days, and work is completed prior to expiration of the permit.
 3. If the structure is determined obsolete or substandard by virtue of any applicable code beyond this chapter, and the applicant fails in their burden of proof that the cost of improvement or restoration is less than 50% of the replacement value, then the right to maintain the nonconformity shall terminate.
 4. Structures granted variances from the dimensional standards are not considered nonconforming and are not subject to the limitations of this section, provided that the there are no changes beyond the limits, conditions, or extent of the approved variance.
- d. **Nonconforming Site Conditions.** Any site condition associated with a conforming use or structure (such as parking, landscape, open space, or other non-building site characteristic) in existence prior to these regulations, but which are not compliant with the standards of these regulations, may continue to exist subject to the following:
1. Any change of use or expansion of use shall require compliance with the new site standards up to the maximum extent practical, considering the extent of area being impacted by work to support the new or expanded use.
 2. Any site development activity on a portion of a site shall require compliance with the new standards on that portion of the site or proportionate to area that is subject to the development activity. For example, a site that is not compliant with the landscape standards must meet the landscape standards prorated to the portion of the site where development activity occurs, but the remainder of the site may remain nonconforming. If more than more than 50% of the entire site area is impacted by development activity, the entire site shall be brought into compliance
 3. Any change of use, building, or site design element that triggers a screening requirement shall require 100% compliance with all screening standards applicable to the site.
 4. Where any application for construction is greater than 50% of the replacement value of a component of the site, that component or the entire site shall be brought into compliance.
 5. The Director may accommodate any other scenarios that meet the intent of this Section and bring the site into greater compliance relative to the level of investment associated with the permitted activity.
- e. **Nonconforming Lots.** Any lot platted legally prior to the adoption or amendment of this code, or any parcel established legally prior to the adoption of subdivision regulations in Greeley, but which could not be platted under the current requirements of this code, may continue to exist provided it complies with the following standards. The size and shape of any nonconforming lot shall not be altered in any way, except to increase the conformity with these regulations.
1. In any district that allows detached houses, a detached house and customary accessory buildings may be erected on any nonconforming lot, provided all standards other than lot dimensions standards are met.
 2. In any district that does not allow detached houses, the nonconforming lot may be used for the smallest-scale building type permitted in the district by these regulations, provided all standards other than lot dimension standards are met.

3. Where any non-conforming lot is under the same ownership as an abutting lot, the City may require administrative plat procedures with regard to any development activity or use of the non-conforming lot. The administrative plat procedures, including lot line adjustments or lot consolidations, shall be used to create the greatest degree of conformity possible.
 4. Any difficulties in meeting the standards of this subsection, or other applicable standards of the development code, which are attributable to the nonconformity of the lot may be used as criteria for other relief from the standards authorized by this code.
- f. **Burden of Proof.** The burden shall be on the applicant to establish that the nonconformity was established lawfully and the entitlement to continuation of nonconforming situations or completion of nonconforming projects according to this section. Owners of nonconformities may request a “certificate of legal nonconforming status” by filing an application with the Director, and once issued the owner may record the certificate with the Weld County Clerk and Recorder..
- g. **Specific Non-conforming Situations.** At the time of any rezoning, in association with annexation, or associated with any other planning effort for a particular geographic area, the City may create rules for specific nonconforming situations. These rules shall be incorporated into the ordinance establishing a new zoning designation or creating the nonconforming situation, according to the applicable procedures of Section 24-204 Rezoning or Section 24-205 Planned Unit Development. In these situations, the Director or Planning Commission may recommend, and the City Council may approve the following:
1. **Benign Nonconformities.** A determination may be made that the nonconformity has no negative effects on the long-term development within the district, and is compatible with the intent and design objectives for future development in the immediate surroundings. In this circumstance, a benign nonconformity may be permitted with the specifically stated additional rights, beyond the standard nonconforming rights of this section.
 2. **Removal of Non-conformity.** A determination may be made that the nonconformity poses significant negative effects on the long-term development within the district, or is incompatible with the intent and design objectives for future development in the immediate surroundings. In this circumstance, a nonconformity may be phased out over time to reduce the rights of the nonconforming situation to less than permitted by this section. Any phased removal of the non-conformity shall be based upon:
 - (a) Identified risks to long-term investments in the surrounding area, and risks that could not otherwise be protected by a different zoning determination for the properties involved;
 - (b) Consideration of reasonable investments in the property up to the time the zoning established the non-conforming situation, and what is an appropriate time to allow a return on those past investments; and
 - (c) Coordinating with the anticipated rate of change in the area and how the presence of the nonconformity affects that change, including other opportunities available for the nonconforming property.

Reserved Sections 24-106 through 24-200

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Chapter 3. Subdivision Standards

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Chapter 4. Zoning Districts & Uses

24-401	Zoning Districts
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Chapter 7. Access & Parking Standards

24-701	Intent & Applicability
24-702	Access & Circulation
24-703	Required Parking
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Chapter 8. Landscape & Site Design Standards

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Chapter 9. Signs

24-901	Intent & Applicability
24-902	Exempt Signs
24-903	Prohibited Signs
24-904	Standards Applicable to All Signs
24-905	Specific Sign Allowances
24-906	Historic Signs
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24-910	Sign Chart

Chapter 10. Special Purpose Districts and Areas

24-1001	Floodplain Overlay District
24-1002	Airport Overlay District
24-1003	Historic Preservation
24-1004	Conservation District
24-1005	Areas of Ecological Significance
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24-1007	Redevelopment Area
24-1008	Character Overlay Districts
24-1009	Entertainment Districts
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Chapter 11. Supplemental Standards

24-1101	Wireless Communication Facilities
24-1102	Oil & Gas
24-1103	Adult Uses
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Chapter 12 Definitions & Terms

24-1201	Description of Uses
24-1202	Glossary of Architecture & Design Terms
24-1203	Definitions

CHAPTER 1 GENERAL PROVISIONS: SECTION MAP		
Current Standards	Reorganized	Comment
18.04.010 Purpose and intent 18.10.020 Purpose and intent	24-101.d Overview; Purposes (entire code)	Generalized some for applicability to entire code, and to better link statutory authority to comp plan policies. (other topics from here will appear in the Intent sections of specific chapters and sections) Emphasized some of the “big picture” urban design aspects of subdivision regulations and zoning – street networks, open and civic space system, block and lot structure – beyond just uses and districts. Begin to establish the hierarchy of guiding and advisory language to be used throughout the entire code: • Purposes – broad policy, entire code • Intent – general principles, specific sections and topics • Design Objectives – desired outcomes, specific techniques
18.04.110 Definitions 18.12.030 Definitions	Chapter 12 Definitions	
18.04.120 Application and jurisdiction of regulations 18.10.030 Application 18.22.030 Jurisdiction (variances)	24-101.d. Jurisdiction	
18.04.130 Variances	24-209 Variances	Moved to procedures chapter [Note: need to be aware of the difference in criteria between a “statutory variance” (applicable to zoning only by statute), and other exceptions or deviations that may apply and/or deviations for non-zoning standards like subdivisions.)
18.04.1310 Violations and penalties 18.14.040 Violations, sanctions and remedies 18.36.120 Fines and penalties	24-104 Enforcement	This section should cover entire code and not be repeated in individual chapters, sections or sub-sections.
18.04.1400 Severability 18.36.170 Severability clause	24-101.e. Overview; Severability	
18.10.010 Short title	24-101.a. Overview; Title	
18.10.040 Fees	24-201.a.1 General – All Applications; Fees	Moved to Chapter 2 with procedures.
18.12.020 Interpretations	24-102 Interpretation	Broadened to cover a range of interpretation issues and used to set up a “plain language” drafting style; many elements of “legalese” and qualifying language can be eliminated from the rest of the code due to this section.
18.14.020 General provisions	deleted or generally addressed in 24-101 Overview and 24-102 Interpretation	
18.14.030 Review authorities 18.22.020 General provisions (variance chapter) 18.35.040 Historic Preservation Commission; establishment and duties	24-103 Administration	Organized the establishment of all review bodies to one section (ZBA and HPC moved here)
18.58.010 Purpose and intent	24-105.a. Nonconformance’s, Intent	
18.58.020 Application	n/a	ineffective statement, incorporated into other substantive standards)
18.58.030 Definitions	Chapter 12 Definitions	

CHAPTER 1 GENERAL PROVISIONS: SECTION MAP		
Current Standards	Reorganized	Comment
18.58.040 Nonconforming uses	24-105.b Nonconformities, Nonconforming Uses	
18.58.050 Nonconforming sites, buildings, and structures	24-105.c. Nonconformities, Nonconforming Structures; 24-105.d Nonconformities, Nonconforming Site Conditions; 24-105.e. Nonconformities, Nonconforming Lots	
18.58.055 Nonconforming uses in nonconforming sites, buildings and structures	24-105.b. Nonconformities, Nonconforming Uses	
18.58.060 Variances	n/a; addressed in 24-209	
18.58.070 Abandonment or reduction of use	24.105.b. Nonconformities, Nonconforming Uses	
18.58.080 Restoration	24-105.c. Nonconformities, Nonconforming Structure	
18.58.090 Certificates of nonconforming use	n/a but 24-105.f. Nonconformities; Burden of Proof	Removed section because not the current practice; but did not the CDD will issue permits if requested as part of applicants / owners burden of proof to establish legal non-conforming situation.
18.58.100 District changes	n/a;	ineffective section
18.58.110 Procedural nonconformity	n/a;	distinct issue from legal non-conformities
18.58.120 Annexation of nonconforming uses, buildings and structures	24-1045.g Nonconformities; Specific Nonconforming Situations	See comment below. (Related section in 24-204 regarding rezoning procedures and conditions associated with rezoning)
18.58.130 Amortization of nonconforming animal confinement uses	24-105.g Nonconformities; Specific Nonconforming Situations	Generalized to address other situations, including criteria and the ability to amortize things beyond feed lots; as well as the ability to grandfather" existing used beyond protections given in Nonconformities section (typically occurs with annexations)

Chapter 2. Procedures

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24-209	Variance
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24-211	Code Amendments
24-212	Vacation & Dedication of Easements
24-213	Vacation & Dedication of Right-of-way
24-214	Annexation

Table 24-2-1: Procedures Summary

Applications	Eligible Applicants			Pre-application Conference	Neighborhood meeting	Notice			Review Body			
	Owner	PC	CC			Post	Publish	Mail	Staff	PC	CC	ZBA
Minor Subdivision	■			☑				☐	D	A	A	
Major Subdivision - Preliminary Plat	■			☑	☐	☑	☑	☑	R	D/PH	A	
Major Subdivision – Final Plat	■			☑					D	A	Ac	
Rezoning	■	■	■	☑	☐	☑	☑	☑	R	R/PH	D/PH	
Planned Unit Development (PUD)	■		■	☑	☑	☑	☑	☑	R	R/PH	D/PH	
Use By Special Review	■			☑	☐	☑	☑	☑	R	D/PH	A	
Site Plan	■			☑		☐		☐	D	A	A	
Alternative Compliance	■			☑				☐	D	A	A	
Minor Variance	■			☑				☐	D		A	A
Variance	■			☑		☑	☑	☑	R		A	D/PH
Appeal of Administrative Decision	■	■	■			☐	☐	☐			A	D/PH
Text Amendment		■	■				☑		R	R/PH	D/PH	
Easement Vacation/Dedication	■							☐	D	A	A	
ROW Vacation/Dedication	■						☑	☑	R	R	D	
Annexation	■		■	☑		☑	☑		R	R/PH	D/PH	

☑ = Require
 ☐ = Director Option
 ■ = Authorized
 PC = Planning Commission
 CC = City Council
 ZBA = Zoning Board of Appeals

R = Review and Recommending Authority
 D = Decision Making Authority
 Ac = Acceptance of Public Improvements
 A = Appeal of Decision
 PH = Public Hearing Required

24-201 General – All Applications**a. Applications and Fees**

1. **Forms.** Applications required under this code shall be submitted to the Community Development Department in the form and format specified by the Department. The Director is authorized to establish submittal requirements and procedures in order to ensure all applications can be evaluated for conformance with this code. The Director may waive the requirement for specific information at the time of application, due to the routine nature of the application or due to the context of a particular application making the information inapplicable for review against the standards and criteria of this code.
2. **Fees.** Applications shall be accompanied by a non-refundable fee set administratively by the City Manager. A copy of the fee schedule shall be maintained by the Community Development Department and City Clerk's office for public inspection. No application shall be accepted or processed without the required fee, except applications initiated by the City.
3. **Eligible Applicants.** Table 24-2-1 indicates applicants eligible for each particular application under this code:
 - (a) **Owner.** The property owner of record for the subject property of the application or that owner's agent authorized by written permission of the owner.
 - (b) **Planning Commission.** The Planning Commission, acting on its own initiative or through recommendations brought to it by city staff, and according to its bylaws and rules of procedure.
 - (c) **City Council.** The City Council acting on its own initiative or through recommendations brought to it by city staff of Planning Commission, and according to its bylaws and rules of procedure.

b. Concurrent Applications. When a project requires approvals under more than one type of application, the Director may determine that each application may run concurrently based on the following:

1. The similarity of information required for each type of application, or where they require different information, the ability to coordinate information, review criteria and decisions under each application.
2. The similarity of notice, review meetings and review bodies required for each application.
3. The ability of the staff and review bodies to make effective decisions when reviewing the applications concurrently.

In cases where the Director determines applications may run concurrently, the application shall be processed through the most comprehensive required review, and lesser incorporated approvals may be conditioned on final outcomes of the last of the related decision.

c. Pre-application Meeting. Pre-application meetings may be requested for any application and shall be required as indicated in Table 24-2-1. A required pre-application meeting may be waived at the Director's discretion and upon the applicant's request, for routine applications where the topics below can be addressed by general correspondence. The applicant shall submit schematic plans, existing conditions analysis, or other concepts and analysis in writing prior to the pre-application meeting to facilitate discussion on the following topics:

1. How the proposed project meets the goals of the Comprehensive Plan, or other specific plans or policies that may impact the application.
2. The applicant's vision and understanding of the market for the proposed project.
3. The proposed uses, general site layout, and conceptual or anticipated design of buildings, including how the project relates to surrounding sites and public spaces.

4. How the project will fit in and contribute to the area and further the intent of the existing or proposed zoning district.
 5. Planning and infrastructure impacts, including timing, phasing, or the need for any technical studies or outside agency coordination and review.
 6. Development review processes and review criteria, and in particular whether any special public information and outreach or specific agency or department reviews are necessary.
 7. Opportunities to improve designs or coordinate the preliminary concepts with other private or public investments in the area.
- d. **Staff Review.** Upon receipt of an application, the Director shall take the following steps:
1. **Determination of Complete Application.**
 - (a) If an application is determined incomplete, the Director shall notify the applicant of the specific ways in which the application is deficient. No further processing of the application shall occur until the deficiencies are corrected. If a deficient application is not corrected within 30 days of the notice, the Director may consider the incomplete application withdrawn.
 - (b) If an application is complete, it shall be processed for formal review.
 2. **Referrals.** The following agencies may be required to review and comment on applications. The Director may determine if other referral agencies may be affected by the project, based on the application and has discretion to add any other relevant or applicable agency to the list.
 - (a) Adjacent or other local governments
 - (b) Colorado Department of Transportation
 - (c) Colorado Parks and Wildlife
 - (d) Colorado Geologic Survey
 - (e) Office of State Engineer
 - (f) Gas and electric utilities;
 - (g) Telecommunications and cable providers;
 - (h) Public safety agencies (police, fire, EMS, health);
 - (i) Respective school district(s) in which the subject property is located;
 - (j) Water and sewer utilities;
 - (k) Ditch companies;
 - (l) Special districts; and
 - (m) Other local, state, or federal government agencies.
 3. **Review & Staff Comments.** The Director shall coordinate a staff review after receipt of a complete application, and may provide the applicant the following information in writing:
 - a. Comments or recommended changes based on the results of any referral agency comments, neighborhood meetings, or staff review.
 - b. Any supplemental information necessary to support the application or to address any comments or recommended changes.
 - c. If the applicant chooses not to address any particular comment or recommended change, a written statement shall be included with the resubmittal that demonstrates a good faith effort to address the issue and justify why the comment was not addressed. The applicant may request to schedule the application for official review based on this justification.
 - d. If the applicant fails to submit revisions or otherwise address staff comments in writing for more than 120 days, the Director may determine the application withdrawn, and the review terminated. Any further action will require a new application and fees.

4. **Scheduling.** Applications that have completed staff review, and addressed comments or recommended changes, shall be scheduled for further review according to these regulations.
 5. **Staff Report.** The Director shall prepare a staff report for applications that require review and decisions by other review bodies. The report shall identify the policies, plans, regulations and review criteria, and identify relevant facts of the application. The Director shall provide a copy of the report to the reviewing body and to the applicant in association with the public meeting agendas and packets.
- e. **Neighborhood Meeting.** A neighborhood meeting may be required prior to the formal public meeting as indicated in Table 24-2-1.
1. **Director Option.** At the pre-application meeting or in association with the review of an application, the Director may require a neighborhood meeting for any project that requires formal review beyond staff, and where:
 - (a) the nature of the project is complex or presents potential for significant changes and unanticipated impacts on property in the vicinity;
 - (b) the intensity of the proposed use or development is likely to present questions and concerns for adjacent property owners, beyond what may typically be allowed in the zoning district; or
 - (c) the required notice or any courtesy notice sent to property owners generates significant questions or concerns.
 2. **Required Meeting or Applicant Option.** A neighborhood meeting is required for any PUD application, and an applicant may elect to have a neighborhood meeting on any other project. These neighborhood meetings should be held prior to a formal application so that input and concerns of potentially impacted property may be considered in the initial application.
 3. **Meeting Format.** Neighborhood meetings shall meet the following:
 - (a) The Director shall coordinate the scheduling, meeting location, and notice..
 - (b) The meeting shall be held at a City facility, or where any other convenient and accessible public meeting facility within the general vicinity of the project, such as a school, community recreation center.
 - (c) The applicant is responsible for all content of the meeting, which at a minimum shall include:
 - (1) The general nature and scope of the proposed project;
 - (2) A summary of the proposed land use, including planned and potential future uses associated with the application;
 - (3) The most recent plans and submittals available for the project, depicting the scale, location and design of any buildings and the relation of all site improvements to the streets and adjacent property; and
 - (4) Identify and explain the subsequent formal review steps with the City, and note that official and formal review by the City may result in changes from the initial concepts.
 - (d) The applicant shall prepare minutes of the meeting including evidence of the notice, attendance, a copy of any presentation materials, a summary of the discussion and issues, and any outcomes or changes from the meeting. These minutes shall supplement the formal application.
- f. **Notice.** Notice shall be provided for each application as indicated in Table 24-2-1. Consistent with the provisions in Table 24-2-1, and in addition to the general publication of meeting agendas, required notice may include the following:

1. **Published.** Where published notice is required, the City shall post the notice on the public notice portion of the City's official website at least 15 days prior to the meeting or hearing. The notice shall include:
 - (a) A general description of the subject property by reference to streets and address;
 - (b) The zoning classification, specific use or action requested;
 - (c) The date, time and place of the public meeting; and
 - (d) A statement that additional information about the request is available at the Community Development Department, or other links to relevant information.

2. **Posted.** Where posted notice is required, notice shall be posted on the property or near the proposed site, visible to surrounding properties and the general public from adjacent public ways, according to the following:
 - (a) The City shall supply the sign(s), which shall include:
 - (1) The zoning classification, specific use or action requested;
 - (2) The date, time and place of the public meeting; and
 - (3) A statement that additional information about the application is available at the Community Development Department
 - (b) One sign facing the most prominent public street is required. The Director may require additional signs and specific locations of signs based on the context of the property.
 - (c) The applicant shall ensure that all signs are posted at least 15 days prior to the public hearing or meeting.
 - (d) The applicant shall supplement the application evidence and a signed statement of compliance with the notice requirement.
 - (e) The applicant shall make a reasonable good faith effort to maintain posted notice throughout the proceedings.

3. **Mailed.** Where mailed notice is required, a courtesy letter shall be sent to all record landowners within 500 feet of the property. However, where the project is very large or intense, or where land ownership patterns would result in few owners being notified, the Director may extend this up to 1,000 feet from the property. Where mailed notice is at the option of the Director, any distance may be established by the Director based on the scale and intensity of the proposed project.
 - (a) The city shall supply the list of owners, and the applicant is responsible for mailing notice.
 - (b) The notice shall be mailed at least 15 days prior to the public meeting.
 - (c) Mailed notice shall state the following:
 - (1) A general description of the subject property by reference to streets and address;
 - (2) The zoning classification, specific use or action requested, and a general description of the project;
 - (3) A legal description or abbreviated legal description of the property;
 - (4) The date, time and place of the public meeting;
 - (5) Whether the meeting is a public hearing, where participants will have a right to speak, present testimony or evidence, and establish a record for the decision, or whether it is a public meeting without that right; and
 - (6) A statement that additional information about the application is available at the Community Development Department.
 - (d) The applicant shall submit a copy of the notice with the application, and evidence and a signed statement verifying notice was sent to all landowners prior to the public meeting or hearing.

4. **Failure of Notice.** Any failure of published, posted or mailed notice shall not invalidate any subsequent process or decision, in the Director's discretion. In making this decision, the Director shall consider whether:
 - (a) Good faith efforts were made to comply with notice, and the failure of notice was beyond the applicant's control;
 - (b) Technical errors in the notice were made, but constructive and actual notice was available to all interested parties; or
 - (c) The failure of notice is not otherwise instrumental to the proceedings, criteria, or record established for the decision.

5. **Surface Development Notice.** Where mailed notice is required by state statutes for any project related to mineral estate owners identified on the county tax assessor's records or who have filed in the office of the county clerk and recorder a request for notification, the applicant shall be responsible for notice. The applicant shall certify that notice has been provided as required by this code and Colorado law prior to a public hearing, public meeting or administrative decision.

- g. **Public Hearings.** Where public hearings are required by Table 24-2-1, the following procedures apply:
 1. The hearing shall be conducted and a record of the proceedings shall be preserved.
 2. Any interested person or party may appear and be heard in person or by agent.
 3. The review body may request testimony or a report on the application from any government official or agency, or any other person with information pertinent to the application.
 4. A public hearing for which proper notice was given may be continued to a later date without again requiring notice, provided the specific date, time, and place of the continued hearing is announced at the original hearing.
 5. If the review body is a recommending body, a written summary of the meeting and the recommendation shall be forwarded to the decision-making body.
 6. A review body is authorized to establish meeting procedures and bylaws, or otherwise state rules regarding specific conduct and management of public hearings, within the parameters of these regulations.

- h. **Action by Review Bodies.** Review bodies shall take the actions indicated in Table 24-2-1. A review body may take any action on the application consistent with notice given and based on the criteria in this Chapter, or it may recommend such action when the review body is a recommending body, including the following:
 1. Approve the application.
 2. Approve the application, with conditions or modifications that make it more consistent with the standards and review criteria.
 3. Deny the application, making specific findings or stating criteria for the denial.
 4. Continue the application to allow further analysis. The continuation period shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

- i. **Appeals.** Where a review body is designated as the appellate body in Table 24-2-1, the following appeal procedures apply:
 1. Appeals shall be filed with the Director within 10 days of the decision by the decision-making review body.
 2. Appeals shall identify the exact provisions in dispute, and whether it is incorrect due to one or more of the following:
 - (a) It was against the express standards of this development code;

- (b) It was an unreasonable interpretation or application of the standards or review criteria;
 - (c) It was erroneous, based on the record and facts reviewed by the decision-making body; or
 - (d) It was otherwise clearly contrary to law.
 3. Appeals may be filed by:
 - (a) the applicant;
 - (b) any person who received mailed notice and who testified or entered a statement at a public hearing; or
 - (c) any director of a city department or referral agency that provided comments on an application.
 4. The appellate body shall consider the application within a reasonable time, considering the next available meeting and the nature of the appeal. The appeal shall be based on the established record, and give deference to the previous review body; however, the appellate body may take any action authorized by the decision-making body under this code if it determines that a clear error was made. The procedure and required notice for an appeal shall be the same as required of the original application.
 5. Where no appeal is designated in Table 24-2-1, the decision shall be final and only appealed as authorized by state law.
- j. **Technical Studies.** The Director, on behalf of any public official, department, or agency, the Planning Commission, or the City Council, may require applicants to submit technical studies necessary to evaluate the application. Technical review by outside entities with expertise or jurisdiction over details of the application may be required in place of, in addition to, or in association with any studies. Examples of technical studies that may be required include traffic studies, engineering studies, geologic or hydrologic studies, environmental impact assessments, noise studies, market studies, or fiscal and economic impact studies. The persons or firms preparing the studies shall be subject to the approval of the Director. The costs of all studies shall be borne by the applicant. Any application that is determined to require technical studies or review from entities outside of the City may require special schedules based on the reasonable time frames to conduct those studies or additional reviews.
- k. **Successive Applications.** When the review body takes final action to deny an application, the same or a similar application may not be refiled for one year from date of denial, except as allowed under this section. The Director may permit a refiling of the application sooner than one year when it is determined that significant physical, economic, or land use changes have taken place within the immediate vicinity, or where a significant text amendment to this code has been adopted that may affect the outcome. There shall be no time limitation on an application that the Director determines is substantially different from a previously denied application, considering the proposed use, scale or intensity of development, and potential impacts on adjacent property.
- l. **Vested Rights.** Greeley, through its home rule authority recognizes vested property rights as specified in this Code. This code preempts and determines which applications are “site specific development plans” for the purposes of the Colorado Vested Property Rights Law, and establishes different rights and obligations associated with approvals. The vested rights in this code meet the intent and objectives of the Colorado Vested Property Rights Law, and ensures all constitutional rights intended to be protected by that law. However, through the Greeley home rule authority, and its statutory obligation to implement the Comprehensive Plan and protect the public safety, health and general welfare, vesting shall only occur to the extent of the standards of this code reflected in specific approved applications. Vesting does not include other regulations that are general in nature or that apply equally to all property subject to these regulations. Vesting does not exempt applications from any subsequent review and approvals prior to construction under this code or other codes. Vesting does not insulate a project from other public health and safety codes, including changes or updates to codes associated with subsequent

reviews, including construction drawings and specifications, drainage plans and permits, and building permits.

24-202 Minor Subdivision

- a. **Applicability.** Minor subdivisions are routine applications that establish or alter legal boundaries of lots or tracts, but do not significantly alter development patterns or impact public improvements and facilities. Minor subdivision applications may be initiated by the property owner. The following actions may be processed as minor subdivisions:
 1. **Lot Line Adjustment.** The alteration of legal boundaries for up to four previously platted lots.
 2. **Lot Consolidation.** The consolidation of up to four previously platted lots or parcels into fewer lots, provided that no resulting lot is larger than three times the size of the largest existing lot or parcel.
 3. **Minor Plat.** The division of land or the replat of previously platted lots or tracts into 10 or fewer lots for residential purposes, or six or fewer lots for any non-residential purposes; or the division of land where all resulting lots or tracts are more than 80 acres; or any development without a land division on a previously unplatted parcel.
 4. **Plat Correction.** A survey or other legal instrument to correct an error in the legal description or other element of an approved plat; to dedicate, vacate, or alter easements; or to confirm legal boundaries of lots in an approved plat that could only be determined post-construction, such as for duplexes or row houses where the units and lots are individually owned.
 5. **Condominium Plat.** The division of a building on an existing, legally platted lot into individual air space ownership units, relative to commonly owned elements and common area covenants and agreements.
- b. **Review Criteria.** A minor subdivision may be approved by the Director if the Director determines that all of the following are met.
 1. No new streets or other public land dedication is needed. If additional right-of-way for existing streets is included with a minor subdivision, acceptance of the dedication by City Council is required.
 2. No significant increase in service requirements (utilities, schools, traffic control, streets, etc.) or impact on the ability to maintain existing service levels will result.
 3. The application does not alter the interpretation of any zoning district boundaries due to adjustments to any lots.
 4. All resulting lots meet the legal standards of the subdivision regulations and applicable zoning districts.
 5. The lot patterns meet all eligibility requirements for minor subdivisions, and are otherwise compatible with the surrounding area and any previously approved preliminary or final plat for the subject property. In determining compatibility, the size and dimension of lots, the layout and design of existing subdivisions and rights-of-way, the degree of change to the character and pattern of buildings, and potential impact on surrounding property shall be considered.
 6. No other significant issues exist with potential development enabled by the plat that could impact planning policies in the area or adjacent property owners.
 7. A condominium plat shall meet the following additional criteria:
 - (a) Consistent with an approved plat demonstrating legal ownership of the lot and any common areas by a single entity.
 - (b) Consistent with a site plan depicting the building to be subdivided into individual units.

- (c) Documentation that assigns responsibility and demonstrates capacity to maintain all common ownership elements.
- (d) Covenants, declarations or party wall agreements or other restrictions to be recorded establish rights and responsibilities for owners of individual units, and designation of all general and limited common elements
- (e) The site and building comply with all aspects of this development code, other than the proposal to divide individual airspace units for common ownership.

Any application not classified as a minor subdivision or not meeting these criteria shall be processed as a major subdivision with a preliminary and final plat.

- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to minor subdivision applications:
 - 1. If the Director determines at any point in the process that the application is not eligible for a minor subdivision, the Director may deny the application or allow the applicant to reclassify as a major subdivision according to additional required information or fees.
 - 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.
 - 3. If a minor subdivision includes additions to existing right-of-way, the minor subdivision shall be placed on the consent agenda for the City Council to accept the dedication.
- d. **Effect of Decision.**
 - 1. *Subdivision Improvement Agreement.* The applicant shall enter into a Subdivision Improvement Agreement for any required improvements, which shall be recorded with or prior to recording of the minor subdivision. The Director may waive the need for a Subdivision Improvement Agreement where there are no required improvements or for routine applications, where the requirements of this code are sufficient to address construction of improvements.
 - 2. *Recording.* The Director shall record the minor subdivision with the Weld County Clerk and Recorder within 60 days. The Director may grant an extension of this period for up to 90 days in order to complete any agreement, or otherwise address the timing and implementation of improvements. Any minor subdivision not recorded within this time shall expire.
 - 3. *Vested Rights.* A recorded minor subdivision shall create a vested property right for 3 years, or for any other time specifically identified in a Subdivision Improvement Agreement. If improvements or other obligations are not completed within this time, or the applicant or future landowners otherwise default on the Subdivision Improvement Agreement, the minor subdivision shall expire and a new plat shall be required prior to any development.

24-203 Major Subdivision

- a. **Applicability.** Major subdivisions apply to all land divisions or other alterations of legal boundaries of lots or tracts that are ineligible for minor subdivision processes in Section 24-202. Major subdivision applications may be initiated by the property owner. Major subdivisions require comprehensive review through separate preliminary and final plat procedures, due to the complexity of coordinating planning, design and engineering requirements. In accordance with Section 24-201.b, the Director may determine at a pre-application conference that a preliminary and final plat may be submitted concurrently, where the application is small or routine.
- b. **Preliminary Plat.** The preliminary plat provides detailed planning review of development patterns, street networks, block and lot layout, and the ability to meet public facility and utility

requirements for future development, prior to preparation of detailed construction and engineering plans. A preliminary plat shall be processed according to the following specific procedures.

1. **Review Criteria.** A preliminary plat shall be reviewed according to the following criteria:
 - (a) The application is in accordance with the Comprehensive Plan, or any other specific plan created under that plan, and in particular, the physical development patterns and design concepts of the plan.
 - (b) The development and infrastructure is arranged in a manner to minimize impacts on geologic hazards, environmentally sensitive areas, wildlife habitat, or other natural features of the land.
 - (c) The arrangement and proposed design of streets, blocks, and open spaces meet the development and design standards of the subdivision regulations, and are coordinated with existing or potential development on adjacent property.
 - (d) The proposed blocks and lots are capable of meeting all development and site design standards under the applicable zoning district.
 - (e) The application demonstrates a preliminary likelihood of being able to meet the design, construction, performance, and maintenance requirements for all required improvements.
 - (f) Any phasing is clearly indicated and demonstrates a logical and coordinated approach to development, and the timing, location, and construction of amenities is consistent throughout phases.
 - (g) Any impacts identified by specific studies or technical reports, including a review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.
 - (h) The design does not impede the construction of anticipated or planned future public infrastructure within the area, or deter future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.
 - (i) The recommendations of professional staff or any other referral agencies authorized to review the subdivision plan.
2. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to preliminary plat applications:
 - (a) At the pre-application meeting, and based on the size, scope and impact of any future development anticipated or pending with the request, the Director shall determine how to coordinate the Neighborhood Meeting and any additional notice of meetings or hearings necessary for the formal review.
 - (b) Any application that is particularly complex or involves significant planning and design issues, may be coordinated with a Rezoning in Section 24-204 or a Planned Unit in Section 24-205, prior to official submittal of a preliminary plat.
 - (c) After review by staff, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission
 - (d) The Planning Commission shall hold a public hearing and make a decision on the preliminary plat. Provided no substantial changes are made in association with a subsequent final plat, a final plat may be administratively approved by staff and public improvements accepted by City Council according to subsection 24-203.c.2.
3. **Effect of Decision.** The approval of the preliminary plat does not constitute an acceptance of the subdivision but authorizes preparation of the final plat. Denial of a preliminary plat may be appealed to the City Council.

4. **Term of Expiration.** The approval of the preliminary plat shall be effective for three years, except that any complete submittal of final plat for any phases indicated on a preliminary plat shall stall the three-year period, and approval of the final plat shall extend the expiration deadline for one year for the remaining portions of the preliminary plat. The Director may grant up to two extensions of this period for up to six months each, if the applicant demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat. Any such extension shall be requested by the applicant in writing prior to the expiration of the preliminary plat.

- c. **Final Plat.** A final plat requires review and refinement of the preliminary plat, review and coordination of construction documents, and review and dedication of easements, rights-of-way and public lands prior to recording subdivisions and authorizing the sale of lots to different owners. After approval of the preliminary plat, the applicant may submit a final plat for all or for portions of the preliminary plat area subject to a phasing plan approved with the preliminary plat. A final plat shall be processed according to the following specific procedures.
 1. **Review Criteria.** A final plat shall be reviewed according to the following criteria, as well as all criteria applicable to the preliminary plat review:
 - (a) The layout and design of the final plat is consistent with the approved preliminary plat considering the number and size of lots and out lots; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments. Deviations that result from further detail in planning, design, and engineering, and that meet the standards of this code, are generally considered “consistent” with the subdivision plan.
 - (b) The construction plans for any utilities, infrastructure or public facilities meet all technical specifications.
 - (c) All required improvements, dedications, fees, financial guarantees, and maintenance guarantees are provided.
 - (d) The phasing and timing of public improvements ensures construction and performance guarantees. Any phasing that meets an approved preliminary plat is presumed acceptable. Any deviations of the final plats from an approved phasing plan may be approved provided it does not alter the timing or coordination of required improvements or amenities for the proposed final plat or any previous approved final plats.
 - (e) The recommendations of professional staff or any other public entity authorized to review the final plat.
 - (f) Deviations in the final plat from the approved preliminary plat may be approved if:
 - (1) Any aspect of the project different from the approved preliminary plat complies with all applicable zoning standards, subdivision design standards, and meets the intent and design objectives of those standards.
 - (2) The change does not increase the impact of any development on required improvements beyond the capacity for required improvements established in the preliminary plat;
 - (3) The change does not violate any condition of the Planning Commission associated with the approval of the preliminary plat or any general development plan applicable to the property;
 - (4) If technical studies were required with the preliminary plat, the author of the study shall submit an amendment noting that the change does not impact any findings of the study; and
 - (5) The change is generally consistent with development concepts in the preliminary plat in terms of land uses, scale and intensity of development, and in no case changes the number of lots, dwelling units,

or buildings, or sizes of blocks and open spaces by more than 10 percent.

2. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this section apply to final plat applications:
 - (a) The applicant shall identify all improvements to be constructed, either according to the required improvements listed in this code or by a specific agreement for the project. The applicant shall submit final plans and specifications for these improvements, and ensure construction of these improvements of financial guarantees as provided in Section 24-304.
 - (b) The staff shall review the final plat for conformance with the planning and design elements, and the engineering specifications for required improvements, and a final plat meeting these criteria shall be approved.
 - (c) A final plat not meeting the review criteria may require reprocessing as a revised preliminary plat.
 - (d) The Director shall make the final decision on final plats.
 - (e) Any final plat approved by the Director and which includes dedication of rights-of-way, public lands or other public improvements, shall be placed on the consent agenda for the City Council to accept the dedication.
3. **Effect of Decision.**
 - (a) **Subdivision Improvement Agreement.** The applicant shall enter into a Subdivision Improvement Agreement with the City for any required improvements, which shall be recorded with or prior to recording of the final plat. The Director may waive the need for a Subdivision Improvement Agreement where there are no required improvements or for routine applications, where the requirements of the code are sufficient to address construction of improvements. At a minimum, the agreement shall indicate the following:
 - (1) Acknowledgement of all required improvements per Section 24-304 of this code, and any specific deviations or additions from this section.
 - (2) A refined timeline coordinating construction drawings, permits, construction, inspections and final acceptance.
 - (3) Specifics on performance and maintenance guarantees, and any particular consequences or contingencies if there is a default.
 - (4) Any additional improvements made necessary by technical studies required by Section 24-201.j or adequate public facilities analysis in Section 24-305.
 - (5) A provision binding any future landowners to the agreement.
 - (6) Any other requirements prior to building permits or certificates of occupancy.
 - (b) **Recording.** The Director shall record the final plat with the Weld County Clerk and Recorder within 60 days. The Director may grant an extension of this period for up to 90 days in order to complete any agreement, or otherwise address the timing and implementation of improvements. Any final plat not recorded within this time shall expire.
 - (c) **Vested Rights.** A recorded final plat shall create a vested property right for 3 years, or for any other time specifically identified in a Subdivision Improvement Agreement. If improvements or other obligations are not completed within this time, or the applicant or future landowners otherwise default on the Subdivision Improvement Agreement, the final plat shall expire and a new plat shall be required prior to any development.

24-204 Rezoning

- a. **Applicability.** The rezoning process provides review of changes to the boundary of zoning districts that may be necessary to implement the Comprehensive Plan, to account for changed conditions in the general area, or to reflect a change in policies with respect to future development. Application for a rezoning may be filed by the property owner, the City Council, or the Planning Commission, or by Staff on behalf of these city entities.
- b. **Review Criteria.** Review, recommendations and decisions for a proposed rezoning shall be based on the following criteria:
 1. The proposal is in accordance with the goals and objectives of the Comprehensive Plan and any other plan, policy or guidance adopted pursuant to that plan.
 2. The proposal can fulfill the intent of the zoning district considering the relationship to surrounding areas.
 3. Whether the area changed, or is it changing to such a degree that it is in the public interest to rezone the subject property to encourage development or redevelopment of the area
 4. Whether the existing zoning been in place for a substantial time without development, and if this indicates the existing zoning is inappropriate given development trends in the vicinity.
 5. The proposed zoning will enable development in character with existing or anticipated development in the area considering the design of streets, civic spaces and other open space; the pattern, scale and format of buildings and sites; and the compatibility and transitions with other complimentary uses and development.
 6. The City or other agencies have the ability to provide services or facilities that may be necessary for anticipated uses in the proposed district.
 7. The change will serve a community need, provide an amenity or accommodate development that is not possible under the current zoning or that was not anticipated at the time of the initial zoning of the property, making the proposed zoning more appropriate than the current zoning.
 8. Any reasonably anticipated negative impacts on the area or adjacent property either are mitigated by sound planning, design and engineering practices or are outweighed by broader public benefits to the surrounding community.
 9. The recommendations of professional staff or advisory review bodies.
- c. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to rezoning applications:
 1. Applications may be accompanied by any preliminary plat, site plan, zoning suitability plan, or other plan necessary to review conformance with the Comprehensive Plan.
 2. At the pre-application meeting, and based on the size, scope and impact of any future development anticipated or pending with the request, the Director shall determine how to coordinate the Neighborhood Meeting and any additional notice of meetings or hearings necessary for the formal review.
 3. After review by staff, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission.
 4. The Planning Commission shall hold a public hearing and shall make a recommendation to the City Council. Upon a recommendation from the Planning Commission, the City Council shall hold a public hearing and make the final decision on rezoning applications.
 5. Rezoning may be conditioned upon anything that further ensures the criteria for rezoning will be met, including:

- (a) A plan that identifies general land use categories, the arrangement and character of streets and open spaces, and the anticipated scale, intensity and character of development and how it relates to adjacent areas.
 - (b) Addressing any existing uses that become non-conforming as provided in Section 24-105.g.
- 6. Approval of a rezoning shall be by ordinance approved by the City Council.
- d. **Effect of Decision.** Upon approval of a change in the district boundaries, the Director shall record a copy of the ordinance approving the zone change with the City Clerk. The Director shall make the change on the official map by an actual change or other record identifying the ordinance and the associated property. The zoning shall remain in effect unless changed by the City Council according to the procedures specified in these regulations.

24-205 Planned Unit Development

- a. **Applicability.** A planned unit development (PUD) application is a type of rezoning based on a specific and integrated development plan, and must follow the procedures and meet the requirements of the rezoning process.
 - 1. Application for a PUD may be filed by the property owner, the City Council, or by staff on behalf of the City Council.
 - 2. The PUD process is intended for development concepts that require a higher degree of specific planning based on the scale and complexity of the project. The higher degree of planning affords flexibility in the standards to improve the relationship of the project to the context, and to better meet the purpose, intent and objectives of this code.
 - 3. A PUD shall include sufficient area to implement planning concepts that generate broader public benefits that can only be gained from flexible application of the standards, and not simply be used to justify deviations for single projects or on a site-specific basis.
 - 4. Generally PUD applications shall include at least 5 acres. Applications for smaller PUD applications may be processed by the Director for:
 - (a) additions to previously approved PUDs if the flexible application of standards is used to integrate projects with previous plans; or
 - (b) projects with a mix of uses that are not otherwise accounted for by one or a combination of the base zoning districts of the code.
- b. **Development Plan.** A PUD requires approval of a specific plan for coordinated development of the entire area within a PUD and shall include the following:
 - 1. **Existing Conditions.** Existing conditions reflect the current state of the property. This includes an analysis identifying the general layout of any existing structures, streets or infrastructure; the location of natural features such as watercourses, steep grades, significant stands of trees, specimen trees or other significant or sensitive features; and the presence and relationships to these same conditions on adjacent property.
 - 2. **Master Development Plan.** A Master Development Plan presents the vision for the project. It identifies the area and relationship of general land use categories, the arrangement and character of streets and open spaces, and the anticipated scale, intensity and character of development through maps, illustrations of development concepts, and statements on the intent and objectives for the project. The Master Development Plan shall indicate why the flexibility requested is justified by the plan and how it could not be easily achieved by other zoning designations. The Master Development Plan shall include the following:

- (a) **Project Boundary.** The overall boundary and name of the Planned Unit Development.
 - (b) **General Layout.** The general development pattern of streets, blocks and open spaces in the concept plan.
 - (c) **Public and Community Facilities.** The location of school sites, amenities, focal points, parks and trails, including any land dedicated to or reserved for acquisition by any public entities.
 - (d) **Planning Areas.** The designation of distinct areas of the project in terms of land uses, intensity or density of development, range of building types, or other unique design characteristics or amenities of the project. All planning areas and open space areas shall be shown overlaid on topography at a scale that clearly delineates the planning area boundaries so that they can be located on the site. For each planning area or within a separate table, indicate the following: acreage; number of dwelling units; land use designation; residential density or nonresidential square footage.
 - (e) **Specific Regulations & Deviations.** The most applicable base zoning district in terms of uses, development standards or design standards shall be designated for each planning area, and specific deviations from these standards shall be identified. These deviations may be more permissive or more restrictive than otherwise applicable standards, but should anticipate long-term development and potential future changes. To the extent items are not addressed by specific deviations, the base zoning district standards will control.
 - (f) **Phasing or Implementation.** Phasing or implementation indicates a strategy and estimated timing of development, and any other administrative details of implementing the plan through future plats and site plans.
3. **Detail Plans.** The PUD may include detail plans and specifications such as renderings, elevations or plans of buildings, streetscapes, and public spaces or other urban design and architectural details demonstrating how the plan will be executed according to the proposed development standards.
 4. **Statement of Commitments.** The applicant shall provide a statement of commitments regarding all future aspects of development, and how these commitments shall be coordinated with the phasing and subsequent platting of the projects. Commitments shall at a minimum include the following:
 - a. Streets and streetscape designs required by Section 24-301.
 - b. Open and civic spaces, whether public, common or private, required by Section 24-302.
 - c. Improvements and performance and maintenance guarantees required by Section 24-304.
 - d. Any additional improvements or dedications to other public entities needed by the adequate facility analysis in Section 24-305.
 - e. Any additional improvements, open spaces, or other development pre-requisites resulting from technical studies that may be required by Section 24-201.j.
 5. **Other Information.** Any other information otherwise required by the city for rezoning.
- c. **Review Criteria**

1. **Generally.** Review, recommendations and decisions for new PUDs shall be based on the following criteria:
 - (a) The plan reflects greater consistency with or more specificity in implementing the Comprehensive Plan than what could be accomplished under application of general zoning districts and development standards.
 - (b) The benefits from any flexibility in the proposed plan:
 - (1) promote the general public health, safety and welfare of the community, and in particular, that of the areas immediately near or within the proposed project, and is not strictly to benefit the applicant or a single project;
 - (2) involves innovative concepts that were not anticipated by the development code; or
 - (3) apply to a unique or specific context in a manner that allows the project to better meet the intent or design objectives of the base zoning districts and standards.
 - (c) The plan reflects generally accepted and sound planning and urban design principles with respect to applying the goals and objectives of the Comprehensive Plan to the area.
 - (d) The plan meets all of the review criteria for zoning map amendments in Section 24-204.

2. **Minor Amendment to PUDs.** Minor amendments to PUDs may be approved by the Director, provided it meets the all of the criteria for the initial approval of the PUD, and is limited to the following:
 - (a) Any change in the number of housing units, change in lot sizes or dimensions, or increase in the land of non-residential uses is less than 5%.
 - (b) There is no decrease in the amount of open space or other reduction of amenities from the approved plan.
 - (c) Any change in a building location is no more than 10% of the approved distance to adjacent property lines.
 - (d) Any change in the height or square footage of buildings is no more than 10% of the approved measurements.
 - (e) Any change in a design standard meets the criteria for alternative compliance in Section 24-208.
 - (f) Changes to the boundaries of any planning areas do not change the boundaries of the PUD, do not later the mix of uses by more than 10% in land area or square footage, and otherwise reflect a similar land use plan.
 - (g) The proposed change is consistent with concept plans in the previously approved planned unit development;
 - (h) The plan meets all of the review criteria for site plans in Section 24-207.

3. **Major Amendment to PUDs.** Changes to previously approved PUDs that exceed allowances for minor amendments may be proposed for a portion of the area under the following criteria:
 - (a) The proposed change does not create potential impacts on other property in the PUD that are greater than would could typically occur in similar zoning districts or contexts; and
 - (b) The process and criteria for the initial approval of a PUD are met.

- d. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the requirements in this sub-section apply to PUDs:
 1. The planned unit development application is a type of rezoning and shall follow the procedures applicable to rezoning in Section 24-204.c.

2. Based on the complexity of projects and degree of advanced planning and urban design necessary for a project, the applicant may elect to break elements of a general development plan in subsection 24-205.b. into two or more steps to review concepts and preliminary designs prior to approval of the complete development plan.
 3. In most cases, land will need to be subdivided in order to carry out a development plan. The platting process is a separate process but may run concurrently with the planned unit development process, as specified in Section 24-201.b.
- e. **Effect of Decision.** Upon approval of a rezoning to PUD, the Director shall record a copy of the ordinance approving the zone change with the City Clerk. The Director shall make the change on the official map by an actual change or other record identifying the ordinance and the associated property. The entire area shall be designated by the name of the PUD and reference to the PUD Master Development Plan. The specific regulations in the Master Development Plan may be based on base zoning districts, and allow any development consistent with the base zoning districts except as specifically modified by the PUD Master Development Plan. The PUD zoning shall remain in effect unless changed by the City Council according to the procedures specified in these regulations.

24-206 Use By Special Review

- a. **Applicability.** A use by special review provides flexibility for different uses within a zoning district and allows the potential for additional uses subject to specific conditions and a case-specific review. These uses may require specific design, operational limitations, or additional mitigation to ensure the use is appropriate in a specific location. Use by special review may be initiated by the property owner.

This process is specifically applicable to uses identified as use by special review (“S”) in the Use Table in Section 24-402.

- b. **Review Criteria.** A use by special review shall be reviewed according to the following criteria:
1. All criteria for site plan review in Section 24-207. are met
 2. The application furthers the intent of the proposed zoning district, does not conflict with the intent of any abutting districts, and is otherwise determined to be consistent with the Comprehensive Plan.
 3. Any associated site development or construction complies with requirements of this code, including any conditions or additional requirements identified for the particular use.
 4. Compatibility with the area in terms of operating characteristics such as hours of operation, visible and audible impacts, traffic patterns, intensity of use, and other potential impacts on adjacent property. The cumulative impact of a concentration of similar existing uses may be considered as part of the impact of a particular use.
 5. The site is physically suitable for the proposed use, and whether any additional site-specific conditions are necessary for the use to be appropriate and meet these criteria.
 6. Whether a limited time period for the permit is reasonably necessary to either limit the duration of the use, assess the use against changing conditions in the area, or ensure periodic reporting and ongoing enforcement of the permit.
 7. The long-range plans for the surrounding area are not negatively impacted considering the permanence of the proposed use, the permanence of existing uses in the area, and any changes in character occurring in the area.
 8. The recommendations of professional staff or other technical reviews associated with the application.
- c. **Review Procedure.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to use by special review applications:

1. Applications shall be accompanied by a site plan to review conformance of any construction with standards of this code, and to review any performance criteria for the particular uses when applied to the site or building.
 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittal, the Director shall schedule review by the Planning Commission.
 3. The Planning Commission shall hold a public hearing and shall make a final decision on uses by special review, and the decision may be appealed to the City Council.
 4. The Planning Commission may attach any additional conditions on the use addressing the physical development, operations, maintenance or any other limitation it feels necessary to ensure the application meets the review criteria.
- d. **Effect of Decision.** Approval of a use by special review shall authorize the applicant to apply for a building permit and other applicable development or construction permits.
1. A use by special review shall expire within one year, if the applicant has not submitted a building permit application, or application for other permits, licenses or approvals necessary to establish the use. The Directory may grant a one-year extension to this period. This period is distinct from any duration limits, periodic reviews or renewal periods once the use is established, which may be a condition of approval of the use.
 2. Ceasing the use for a period of more than 1 year shall be considered abandonment of the use by special review, and the approval shall expire.
 3. Minor changes to an approved use by special review may be approved by Director upon finding all of the following:
 - (a) The change expands the floor area of the original approval by less than 10%;
 - (b) There is not a change of use or significant increase in the intensity of the use that could adversely impact adjacent property;
 - (c) The change does not exceed the limits or violate any specific conditions of the original approval; and
 - (d) The change complies with all other provisions of this code, including the Site Plan procedures and criteria in 24-207.

Any other changes to the use shall require an amendment to the use by special review through the same procedures and criteria as the original application
 4. A use by special review may be revoked by the Planning Commission through the same procedures granting the use, upon a finding that the conditions of approval have not been met, or that the use has otherwise violated the provisions of this code.

24-207 Site Plan

- a. **Applicability.** The site plan process provides review of development projects that propose a change to buildings and sites that may impact the relationship to the streetscape or adjacent property, or may include a change of use or activity on the site. It ensures that projects meet the development and design standards of this code, and coordinates projects with surrounding development patterns and public spaces, including compatible arrangement of buildings, pedestrian and vehicle access, site design, lighting and landscape design. Site plans may be initiated by the property owner.

The site plan process specifically applies to reviews prior to any of the following:

1. Any building or site improvements;
 2. A grading or building permit; or
 3. A change of use.
- b. **Review Criteria.** In general, any site plan in compliance with all applicable standards of this code shall be approved. In making a determination of compliance with the standards applied to

particular site, or exercising any discretion under the standards, a site plan shall be reviewed according to the following criteria:

1. **Generally.**
 - (a) The plan meets all applicable standards or the criteria for any discretionary approvals.
 - (b) The plan does not substantially undermine any goals or objectives of the Comprehensive Plan that are applicable to the area or to the specific project.
 - (c) The plan does not present any other apparent risks to the public health, safety or welfare of the community.
 2. **Site Design and Engineering.**
 - (a) The plan provides safe access and internal circulation considering the site, the block and other surrounding connections, and appropriately balances vehicle, bicycle and pedestrian needs for the context.
 - (b) The plan provides or has existing capacity for utilities and other required improvements to serve the proposed development.
 - (c) The plan provides adequate management of storm water runoff.
 - (d) The plan provides proper grading considering prevailing grades and the relationship to adjacent sites.
 3. **Landscape and Open Space Design.**
 - (a) The plan creates an attractive aesthetic environment and improves relationships to the streetscape or other nearby public, civic or common spaces.
 - (b) The plan enhances the environmental and ecological functions of un-built portions of the site, and makes effective use and conservation of water resources.
 - (c) The plan reduces the exposure and adverse impact of more intense activities or components of the site or building on the streetscape and on adjacent properties.
 4. **Building Design.**
 - (a) The location, orientation, scale and massing of the building creates appropriate relationships to the streetscape and to adjacent properties.
 - (b) The selection and application of materials will promote proper maintenance and quality appearances over time.
 - (c) The location, fixtures and types of building and site lighting promotes creates aesthetic enhancements, promotes safety and security, and accounts for sensitive borders with the right-of-way or adjacent property
 - (d) The building reinforces the character of the area and reflects a compatible architectural relationship to adjacent buildings. Specifically, if there is any consistency or commonality in the scale, proportion, forms and features, and materials of adjacent buildings, they inform choices on the proposed building.
- c. **Review Procedure.** In addition to the general requirements in Table 24--1 and Section 24-201, the following requirements are specific to site plan applications:
1. At the applicant's discretion, and as part of the pre-application steps, the applicant may present a preliminary or conceptual site plan. This may be used to confirm interpretations, test basic concepts and standards, or review options for a proposed project.
 2. Any requests for alternative compliance or a variance from the standards are distinct applications, but may be coordinated with the Site Plan review as provided in Sections 24-208 and 24-209.
 3. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.

4. The Director may determine that any application meeting these eligibility criteria still presents significant change or potential impacts on the area, or presents substantial interpretation questions on the application of development standards or review criteria. The Director may forward the application to the Planning Commission for a decisions according to the criteria in this Section.
- d. **Effect of Decision.** Approval of a site plan shall be valid and create a vested property right for 1 year, and authorize the applicant to apply for a building permit and all other applicable permits. The decision may be appealed to the Planning Commission. The Director may grant one extension for up to 1 additional year. Failure to obtain permits, or otherwise achieve substantial completion of improvements or commence the use within this time frame shall cause the approval to expire.

24-208 Alternative Compliance

- a. **Applicability.** The alternative compliance process provides limited flexibility in the application of design standards so that the best design solution may be applied to a particular context or site. . It ensures that projects meet the intent and design objectives of the standards of this code, but allows for relief from strict application of the standards where an equal or better design solution is possible. Alternative compliance shall not reduce requirements of this code, but provide equivalent standards applied in a site-specific or creative way. Alternative compliance applications may be initiated by the property owner.

Specifically alternative compliance shall be applicable for any of the following:

1. Residential design standards in Section 24-503;
 2. Non-residential design standards in Section 24-603;
 3. Access and parking standards in Chapter 7;
 4. Landscape standards in Chapter 8; and
 5. Sign standards in Chapter 9.
- b. **Review Criteria.** The following criteria apply to any application that is proposing alternative compliance to any of the standards.
 1. The alternative shall not alter any use standard, and deviation from any dimension or quantity standard shall be limited to 10%, except where specific sections authorize greater deviations. The Redevelopment Area established in Section 24-1007, shall not be limited in the extent of alternative compliance that may be considered.
 2. The alternative shall be based on specific conditions of the site that make the applicable standard impractical, or where compliance with the standard would not clearly advance the intent and design objective of the standard.
 3. The proposed alternative shall equally or better meet the intent or design objective of the particular standard.
 4. The alternative shall not have negative impacts on the adjacent sites, and otherwise affect adjacent sites in a similar way as would otherwise occur by complying with the standard.
 5. The alternative shall not undermine any other planning policy or design goals applicable to the site or general area.
 6. The alternative shall not be strictly for the convenience of a specific project, but is justified under any of the following broader community benefits:
 - (a) aesthetic considerations that permit better coordination with the established character of the specific area;
 - (b) improved environmental performance;
 - (c) enhanced pedestrian amenity of civic spaces;

- (d) adaptive reuse of existing buildings or infill on existing lots that otherwise would likely not occur;
 - (e) better serves public health and safety considerations; or
 - (f) more directly advances any official city-approved plans or policies applicable to a particular area.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to site plan applications:
 - 1. Applications for alternative compliance may be submitted independently in advance of a site plan, provided there is sufficient information to evaluate the application according to the criteria. Alternatively, an application for a alternative compliance may be submitted with a site plan, provided that specific standards for which alternative compliance is proposed are clearly called out as a separate issue and decision in the application materials.
 - 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director may make a final decision.
 - 3. Any request for alternative compliance associated with another application that requires approval of another review body, may be approved by the Director conditioned on final approval of the associated application. The alternative compliance shall be noted in the associated application and either affirmed or denied by the review body according to the criteria of the associated application.
- d. **Effect of Decision.** Approval of alternative compliance shall be indicated by a written statement of the Director. It shall authorize deviation from the standards only to the extent demonstrated on the approved plans. The written statement of approval shall be included with a subsequent submitted site plan, or if associated with a site plan application clearly called out distinct from the site plan submittal. The approval shall only be valid for one year from the written statement, unless a complete site plan application is submitted, in which case the alternative compliance approval shall remain valid in association with the site plan submittal. The Director may grant an extension of up to 6 months provided the conditions affecting approval of the approval have not significantly changed. Denial of alternative compliance may be appealed to the Planning Commission.

24-209 Variance

- a. **Applicability.** A variance is a process to provide relief from a strict interpretation of the zoning and development standards of this code, which when applied to a particular property and in a specific context would create practical difficulties or unnecessary hardship on all reasonable use of the property. This application shall only apply to the design, dimension, and other site development standards of this code and shall not be used to authorize a use that is prohibited by the applicable zoning district. Variances may be initiated by the property owner.
- b. **Review Criteria.** A variance shall be reviewed and approved only on the finding by the Zoning Board of Appeals that the following conditions are met:
 - 1. The strict application of this code would result in practical difficulties or unnecessary hardships that limit the reasonable use of the property without granting the variance.
 - 2. The difficulty or hardship is caused by conditions on the property that are unusual or atypical, are not are result of general conditions in the area, and were not created by the applicant.
 - 3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.

4. Granting the variance will not adversely affect the public health, safety, or general welfare.
 5. Granting the variance is consistent with the Land Use Chapter of the Comprehensive Plan and area or neighborhood plans, or may achieve greater consistency with these plans than if the codes were strictly applied.
 6. Granting the variance does not undermine the purposes and intent of this code, and is consistent with the specific intent or design objectives of the provision for which the variance is sought.
 7. The requested variance is the minimum necessary to relieve the difficulty or hardship and permit reasonable use of the property.
- c. **Minor Variance Procedures.** The Director may approve minor variances subject to the following:
1. Applications for minor variances may be submitted independently in advance of a site plan, provided there is sufficient information to evaluate the application according to the criteria. Alternatively, an application for a minor variance may be submitted with a site plan, provided the need for the variance is clearly called out as a separate issue and decision in the application materials.
 2. Mailed notice shall be provided to all abutting property owners, allowing up to 15 days for the owners to object. Any objections shall require the variance to be processed with the Zoning Board of Appeals according to the rest of this Section.
 3. Minor variances shall be limited to the following circumstances:
 - (a) Variance to a setback, building location, or building height requirement by up to 10% of the requirement. Where this would be less than 1 foot, the Director may approve a variance up to 1 foot.
 - (b) Variance to a lot or open space area or dimension requirement of up to 5% of the requirement.
 - (c) Variance to a building coverage requirement by up to 10% of the requirement.
 4. The Director's decision shall be based on the criteria in Section 24-209.b.
- d. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to variance applications not eligible for minor variances:
1. Applications may be accompanied by a site plan where it is necessary to review conformance with standards of this code and the variance criteria.
 2. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall schedule review by the Zoning Board of Appeals.
 3. Approval by a majority of the Board present shall be necessary to grant a variance.
 4. In granting a variance, the Board may impose conditions and requirements that best assure the criteria for approval are in place and maintained, and any violation of these conditions shall be considered a violation of the ordinance.
- e. **Effect of Decision.** Upon approval of a variance, a Certificate of Variance Approval shall be recorded for the subject property by the Director in the Weld County Clerk and Recorder's Office. Upon filing, the applicant may proceed with any necessary approvals or permits authorized in the variance. Any variance not filed and acted upon within 12 months shall expire and no further action is permitted. The Director may grant an extension of up to 6 months provided the conditions affecting approval of the variance have not significantly changed. Denial of a minor variance by the Director may be appealed to the Zoning Board of Appeals. Denial of a variance by the Board of Zoning Appeals may be appealed to the City Council.

24-210 Appeal of Administrative Decision

- a. **Applicability.** The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City. Except for where this Chapter and Table 24-2-1 establish a different appeal process for specific applications, appeals of administrative decisions may be filed with the Zoning Board of Appeals. Appeals may be filed by any person aggrieved and materially affected by a final decision of an administrative official, or by any officer, department, board, or official public body of the City. Appeals of administrative decisions shall be filed in writing with the Community Development Department within 10 days of the date of the decision being appealed.
- b. **Effect of Filing.** An appeal halts all proceedings in furtherance of the decision appealed from unless the official making the decision certifies to the Board that it could cause imminent peril to life or property. In such case, the Board may elect to allow the official to continue proceedings in furtherance of the decision while the appeal is pending a final decision of the Board.
- c. **Notice.** Notice of the appeal shall be served upon the person whose decision is being appealed by providing a copy of the appeal. The administrative official whose decision is being appealed shall transmit to the Zoning Board of Appeals all plans, applications and other files directly impacting the decision and constituting the official record upon which the action appealed is taken within 10 days of receipt of such filing of the appeal. If the appeal is based on an application that required any other notice under this code, notice of the appeal shall also occur as required by the original application.
- c. **Action and Review Criteria.** The Zoning Board of Appeals shall grant the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. A majority vote of the Board present shall be necessary to sustain an appeal. An appeal shall be sustained only upon written findings that the official was in error. In exercising the appeal power, the Board shall have all the powers of the official from whom the appeal is taken, and the Board may reverse or affirm wholly or partly or may modify the decision being appealed.
- e. **Effect of Decision.** The decision by the Zoning Board of Appeals shall have the same effect as a decision made by the administrative official but shall be limited to the facts and circumstances of that particular case. The Director may use the Zoning Board of Appeals decision on an appeal as a factor when applying the standard appealed from to other similar circumstances. Any person aggrieved by a final decision of the Zoning Board of Appeals may appeal City Council according to Table 24-2-1 and Section 24-201.i.

24-211 Code Amendments

- a. **Applicability.** Amendments to these regulations may be initiated by the City Council or the Planning Commission, or by Staff on behalf of these entities.
- b. **Review Criteria.** A code amendment shall be reviewed according to the following criteria:
 1. The amendment furthers the purposes of these regulations in Section 24-101.c.
 2. The amendment is in accordance with the Comprehensive Plan and has been considered for both its long-range affects as well as immediate impacts.
 3. The amendment promotes the public safety, health and general welfare of the citizens of Greeley.
 4. The amendment improves the effectiveness and efficiency of administering the Land Development Code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to text amendment applications:

1. Applications may be accompanied by a related Comprehensive Plan amendment, or more specific plan, provided the amendment or plan has met all of the legal and policy requirements for plan approvals independent of the proposed code amendment.
 2. All amendments shall first require the recommendation of the Planning Commission. The City Council may recommend the application be returned to Planning Commission for further study or additional information at its next regular meeting. Failure by the Planning Commission to consider or revise its recommendation shall be considered a resubmission of its original recommendation.
 3. The Planning Commission may recommend or City Council may approve a lessor change than was proposed in the notice, when considering the proposed change relative to the currently applicable standards.
- d. **Effect of Decision.** Amendments to the text of these regulations shall be approved by the City Council in the form of an ordinance and be effective after the date specified in the ordinance. The Director shall incorporate approved amendments into this code by reference to the specific amending ordinance, and indicate the newly applicable provisions and the replaced provisions, or by recodification of the official code, that incorporates the approved amendment.

24-212 Dedication & Vacation of Easements

- a. **Applicability.** Dedication and vacation of easements is used to officially record or eliminate easements granting specific access and property interests stated in the recorded document. Easements may be dedicated or vacated in association with a minor or major subdivision, or by this section. Eligible applicants for dedication of easements include anyone with a property interest in the abutting and underlying land, and eligible applicants for vacations are only the easement holder.
- b. **Review Criteria.** The following criteria apply to dedication and vacation of easements:
1. All legal pre-requisites for recording or eliminating the property interest have been established, and all forms and fees required by the City have been submitted.
 2. The applicant has established written evidence of ownership, and provided notice to all other ownership interests in the easement or affected property.
 3. The application will not be detrimental to any adjacent property owner, and no owner or entity with a property interest in the easement has objected.
 4. All parties in interest or potentially impacted by the application, and any agencies or city departments with an interest, have received notice and have had time to comment.
 5. For a vacation, there is no public purpose for the easement, considering the Comprehensive Plan, any specific transportation, open space or other public facilities plans, or other plans or policies under those plans.
 6. The application meets all other procedures and requirements of the Colorado Statutes, the Colorado Constitution, and the municipal code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to dedicating or vacating easements:
1. The applicant shall submit a plat or other legal document showing the specific property rights to be vacated or dedicated, and the affect to adjacent or abutting property.
 2. The Director shall coordinate review of the application per Section 24-201.f., and in particular determine whether any referral agencies who may have facilities or other interest in the easement or right-of-way should be notified, or if all potentially affected property owners have been notified.

3. The Director shall sufficient time from notice for necessary referral agencies to comment, or require consent forms from any affected parties. The Director may extend this time period where the nature of the application or caseloads warrant further consideration from referral agencies, city departments, or other interested parties.
 4. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall make a final decision.
- d. **Effect of Decision.** After approval of an easement dedication or vacation, the Director shall record the plat or other legal document with the Weld County Clerk and Recorder's Office. A denial of a vacation or dedication application may be appealed to the Planning Commission.

24-213 Dedication & Vacation of Rights-of-Way

- a. **Applicability.** Dedication and vacation of rights-of-way is used to officially record or eliminate rights granting specific access and property interests stated in the recorded document, which are not associated with a major subdivision process. Eligible applicants include the City or an abutting and underlying property owner. For any right-of-way abutting multiple property owners, the City may require that all owners join in the application.
- b. **Review Criteria.** The following criteria apply to dedication and vacation of rights-of-way:
1. All legal pre-requisites for recording or eliminating the property interest have been established, and all forms and fees required by the City have been submitted.
 2. The applicant has established written evidence of ownership of property abutting or underlying the right-of-way. Where multiple properties are involved each owner shall be joined in the application
 3. The application will not be detrimental to any adjacent property owner, and no owner or entity with a property interest in the easement has objected.
 4. All parties in interest or potentially impacted by the application, and any agencies or city departments with an interest, have received notice and have had time to comment.
 5. For a vacation, there is no public purpose for the right-of-way, considering the Comprehensive Plan, any specific transportation, open space or other public facilities plans, or other plans or policies under those plans.
 6. For a dedication, the right-of-way will serve a public purpose and the dedication is sufficient to meet the design standards and specifications of Chapter 3 for streets, trails or other rights-of-way.
 7. The application meets all other procedures and requirements of the Colorado Statutes, the Colorado Constitution, and the municipal code.
- c. **Review Procedures.** In addition to the general requirements in Table 24-2-1 and Section 24-201, the following requirements are specific to vacating rights-of-way or easements:
1. The applicant shall submit a plat or other legal document showing the specific property rights to be vacated or dedicated, and the affect to adjacent or abutting property.
 2. The Director shall coordinate review of the application per section 24-201.f., and in particular determine whether any referral agencies who may have facilities or other interest in the right-of-way should be notified, or if all potentially affected property owners have been notified.
 3. The Director shall allow sufficient from notice for necessary referral agencies to comment, or require consent forms from any affected parties. The Director may extend this time period where the nature of the application or caseloads warrant further consideration from referral agencies, city departments, or other interested parties.
 4. After staff review, receipt of any comments from referral agencies, and any necessary resubmittals, the Director shall schedule review by the Planning Commission.

5. The Planning Commission shall consider the application subject to the review criteria and make a recommendation to the City Council.
 6. Upon receipt of a recommendation from the Planning Commission, the City Council shall make a final decision, and may condition a decision to vacate right-of-way on reserving any interest it determines necessary to serve a public purpose or the interests of the affected property.
- d. **Effect of Decision.** After approval of a right-of-way dedication or vacation, the City Clerk shall record a copy of the scale drawing or illustration and legal description in the Weld County Clerk and Recorder's Office.

24-214 Annexation

- a. **Applicability.** The annexation process is to add unincorporated lands to the municipal boundaries, and consider well-ordered development of the City, and the extension of municipal services and facilities in an efficient, and effective manner. Annexation applications may be by petition of the land owners or at the initiation of the City Council.
- b. **Review Criteria.**
1. **General Eligibility.** The City Council may consider an annexation petition for land that satisfies the eligibility requirements of the statutes of the state as follows:
 - (a) The area proposed for annexation has not less than one-sixth of its perimeter contiguous with the municipal boundaries; and
 - (b) A community of interest exists between the area proposed for annexation and the City; the area is urban or will be urbanized in the near future; and the area is integrated with or is capable of being integrated with the annexing municipality.
 - (c) The full width of all public rights-of-way adjacent to a proposed annexation shall be included in the annexation.
 - (d) The responsibility to apply for exclusion from any applicable special districts shall be upon the applicant of the annexation.
 - (e) Annexations of enclaves may be initiated by the City Council when such enclaves have been completely surrounded by property within the municipal limits for a period of at least three years.
 2. **Specific Criteria.** The Planning Commission and City Council shall evaluate annexations according to the following criteria:
 - (a) The proposed annexation is in conformance with the City's Comprehensive Plan;
 - (b) The proposed annexation promotes geographical balance of the City's land use pattern;
 - (c) Adequate services are or will be available to support the development expected to result from the proposed annexation, in accordance with Section 24-305.
 - (d) The proposed annexation provides for a continual and rational boundary; and
 - (e) The proposed annexation is needed to accommodate future land use requirements.
- c. **Review Procedures.** In addition to any specific procedure required by the laws of the state at the time of annexation, and in accordance with the general procedures applicable by Table 24-2-1 and Section 24-201, the following specific procedures apply to annexations:
1. **Petition for Annexation.** The petition shall be signed by persons comprising more than 50% of the landowners in the area and owning more than 50% of the land area. Sample petitions are available from the Community Development Department.

2. *Annexation Elections.* As an alternative to an annexation petition, the qualified electors of the area being proposed for annexation may petition the City Council to hold an annexation election.
 - (a) The petition for annexation election shall be signed by at least 75 qualified electors or 10% of the electors, whichever is less, or as otherwise required by state statutes.
 - (b) The petition shall be filed with the City Clerk and shall comply with the provisions of the state statutes.
 - (c) If the petition for annexation election is in substantial compliance with state statutes, the City Council shall call for an election to be held. Notice of such election shall be given by the City Clerk.
 - (d) If a majority of the votes cast are against annexation, or the vote is tied, the annexation proceedings to date will be voided and considered of no effect and the City Council shall proceed no further with the annexation proceedings.
 - (e) If a majority of the votes cast at the election are for annexation, the City Council may thereafter annex the area.
3. *Application.* Application form and related application fees, including all additional plans and details required on the forms shall be provided by the applicant.
4. *Request for Zoning.* The applicant shall submit a request for zoning in accordance with this section and Section 24-204, Rezoning or Section 24-205 Planned Unit Development. The Community Development Director shall conduct an analysis of existing land uses on the subject property to ascertain zoning and lawfully established nonconforming uses. Nonconforming uses shall be permitted to continue, as provided in Section 24-105.
5. *Staff and Agency Review.* The Director shall coordinate review of an application with all necessary reviewing agencies, and allow them two weeks from the date of distribution of the annexation plat and supporting documents to make any objections or comments to the Community Development Director. This time period may be extended to the minimum period needed to complete the review.
6. *Resolution to Consider Annexation.* The City Council shall determine whether to proceed with annexation of property by resolution which shall include the public hearing date and, at the same time, shall determine if an annexation agreement will be required.
7. *Annexation Impact Report.* For annexations of areas larger than ten acres, the City shall prepare an impact report concerning the proposed annexation. The report shall be prepared at least 25 days prior to the date of the City Council's hearing on the proposed annexation, and a copy of the report shall be filed with the Board of County Commissioners governing the area proposed to be annexed within five days after preparation of the report. The annexation impact report shall contain the following information at a minimum:
 - (a) A map or maps of the municipality and adjacent territory to show the following:
 - (1) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;
 - (2) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and
 - (3) The existing and proposed land uses in the areas to be annexed.
 - (b) A copy of any draft or final annexation agreement, if available;

- (c) A statement on plans of the City for extending and providing municipal services at the time of annexation;
 - (d) A statement on the method to finance the extension of the municipal services into the area to be annexed;
 - (e) A statement identifying existing districts within the area to be annexed; and
 - (f) A statement on the effect of annexation upon local public school district systems, including the estimated number of students generated and the capital construction required to educate students.
- 8. *Planning Commission Hearing.* The Planning Commission shall hold a public hearing on the annexation. In making a recommendation on an annexation, the Planning Commission shall consider the review criteria in this Section, any comments received from agencies or offices receiving copies of the annexation plat, the staff recommendation and any comments received from citizens.
- 9. *City Council Hearing.* The City Council shall hold a public hearing on the annexation. In taking action on an annexation, the City Council shall consider the review criteria in this Section, any comments received from agencies or offices receiving copies of the annexation plat, the staff and Planning Commission recommendations and any comments received from citizens.
- d. **Effect of Decision.** If the annexation is approved, the Community Development Director shall cause a copy of the signed annexation plat to be recorded in the Weld County Clerk and Recorder's Office. Annexed areas shall be included in the City's zoning ordinance and map within 90 days after the effective date of the annexation ordinance, except that the proposed zoning ordinance shall not be passed on final reading prior to the adoption of the annexation ordinance. The City shall consider zoning such newly annexed areas under the appropriate zoning category as follows:
 - 1. If land use approval or development of areas being considered for annexation is not pending upon completion of annexation, if the subject property is in a transitional state regarding development or if it is in the best interest of the City, the City Council shall place the newly annexed property into the H-A Holding Agriculture Zoning District.
 - 2. Requests for zoning districts other than the H-A Holding Agriculture District may be considered by the City Council in conjunction with the submittal of all applicable requirements for a rezoning application. The City Council shall place the newly annexed property into the zoning district most appropriate, considering the goals and objectives of the City's Comprehensive Plan and the applicant's future development plans.
 - 3. Requests for zoning to the C-D Conservation District shall be exempt from the requirements of Subsections a. and b. above.
 - 4. Property which does not have an approved Development Plan per Section 24-205.b. or other land use or development plan per Section 24-204.c.5.(a), and does not develop within three years from the effective date of this Section shall be required to submit plan prior to, or in conjunction with, subdivision or site development.
 - 5. During the time in which zoning of newly annexed areas takes place, the City may refuse to issue any building or occupancy permit for any portion or all of the newly annexed area.

Reserved Sections 24-215 through 24-300

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Chapter 12 Definitions & Terms

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CHAPTER 2 PROCEDURES: SECTION MAP		
Current Sections	Reorganized Code	Comment
Article II (Subdivision Regulations) Pre-Application Conference 18.04.200 Process 18.04.1300 Processing and reviewing fees. 18.10.040 Fees Chapter 18.18 (zoning) Notice 18.18.010 - 140 Chapter 18.20 (zoning) Review Procedures 18.20.010 - 040	24-201 General – All Applications; a. Applications and Fees b. Concurrent Applications c. Pre-application Meeting d. Staff Review e. Neighborhood Meeting f. Notice g. Public Hearings h. Action by Review Bodies i. Appeals j. Technical Studies k. Successive Applications l. Vested Rights	Generalize and simplify, and include as applicable to all applications, with the following adjustments and clarifications: • Neighborhood meeting put at the option of Director with specific criteria – analyzed at pre-application or after notice. • Notice updated – refined distances for mailed; shifted newspaper to on-line, clarified sign posting process • Clarified vested rights for particular application (coordinating home rule authority vs. statutory provisions)
Article VI (Subdivision Regulations) Minor Plat 18.04.600 – 660 Article X (Subdivision Regulations) Correction Plat 18.04.1000 – 1010)	24-202 Minor Subdivisions a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Refined / clarified range of administrative plats; simplify;
Article IV Preliminary Plat 18.04.400 – 450 Article V (Subdivision Regulations) Final Plat 18.04.500- 550 18.04.130 Variances (subdivisions)	24-203 Major Subdivision a. Applicability b. Preliminary Plat(1.- 3. Review Criteria; Review Procedures; Effect of Decision) c. Final Plat (1. – 3. Review Criteria; Review Procedures; Effect of Decision)	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure; integrated options and alternatives into platting standards and criteria to avoid confusion with statutory variance criteria (zoning only), and exceptions or exemptions in platting process (no statutory “variance” criteria).
18.30.050 Establishment of zoning and rezoning procedures 18.30.060 City Council and Planning Commission initiated rezoning	24-204 Rezoning a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure; coordinated review criteria with specific planning policies and elements of reorganized code. Eliminated Development Concept Master Plan as a defined process, but included specific elements of “conditional rezoning.”

CHAPTER 2 PROCEDURES: SECTION MAP		
Current Sections	Reorganized Code	Comment
Chapter 18.32 Planned Unit Developments; 18.32.010 – 160	24-205 Planned Unit Development; a. Applicability b. Development Plan c. Review Criteria d. Review Procedures e. Effect of Decision	Simplified and reorganizes; coordinated with 24-201 and 24-204 to avoid repetition of generally applicable procedures; coordinated with 24-204 to avoid repetition of rezoning procedures. - Refined what elements go into a development plan. - Clarified how to amend PUD and what rights beyond plan ("base zoning") go along with PUDs. - Streamlined PUD into single plan approval process into 1 review - - unless applicant chooses to separate into conceptual plan and specific plan/zoning (see 24-205;d.2.) ...with follow up development done through Site Plan and Plat process - - unless applicant chooses to join these as concurrent applications (see 24-201.b.). - Require "statement of commitments" to coordinate plan with subsequent platting.
18.20.060 - 130 Use by special review	24-206 Use by Special Review a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure
18.20.030 Permitted Uses 18.20.040 – 055 Design review uses 18.44.120 Architectural Review Process	24-207 Site Plan a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Coordinated several administrative review and approvals into Site Plan process; removal of Architectural Review Committee, since they have no formal role.
18.38.140 Alternative Compliance	24-208 Alternative Compliance a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Reorganized as a specific and complimentary procedure to other applications; Clarified applicability and review criteria, and shifted all alternative compliance to staff approval; Coordinate with specific development standards where alternative compliance is promoted.
Chapter 18.22 Variances (zoning); 18.22.010 - 060	24-209 Variance a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure.
Chapter 18.24 Appeals(zoning); 18.24.010 - 050	24-210 Appeal of Administrative Decisions a. Applicability b. Effect of Filing c. Notice d. Action and Review Criteria e. Effect of Decision	Coordinates with state statute provisions for any appeal that is not generally specified through other development processes. See also 24-201.i., and the effect of decision or Table 24-2-1 for how appeals specified by Development Code are addressed.

CHAPTER 2 PROCEDURES: SECTION MAP		
Current Sections	Reorganized Code	Comment
(current section is mixed in with general rezoning property)	24-211 Code Amendments a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Separated from other development application procedures.
Article VII (Subdivision Regulations) Easement Dedication, Vacation and Recordation 18.04.700 – 18.04.710	24-212 Dedication & Vacation of Easements a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure. • Added criteria for Director approval • Removed submittal requirements from code (see 24-201.a.1 on Director authority to specify application forms and submittal requirements.
Article VIII (Subdivision Regulations) Right-of-way Dedication and Vacation 18.04.800 - 810	24-213 Dedication & Vacation of Rights-of-way a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Simplify and reorganized; coordinated with 24-201 to avoid repetition of generally applicable procedure. • Added criteria for PC / CC approval • Removed submittal requirements from code (see 24-201.a.1 on Director authority to specify application forms and submittal requirements.
Chapter 18.26 Annexation; 18.26.010 – 080	24-214 Annexation a. Applicability b. Review Criteria c. Review Procedures d. Effect of Decision	Reorganized and simplified; coordinated with general procedures in 24-201 to not repeat common elements • Coordinated with other area- or development-specific plans and rezoning options; • Clarified links to required improvements and annexation impact reports • Note: broadened ability to deal with amortization and/or “grandfathering” non-conforming uses upon rezoning, but added generalized criterial (rather than just “animal feed lots”) (see 24-204.c.5 and 24-105.g.)

Chair Yeater expressed the importance that City Council understand the position of the Planning Commission that the definition of “family” needs to change before a code update. He asked staff to explain what can be done to change the enforcement of this and added that the conversation might have been different if the issues of noise, trash and parking could have been addressed in a more comprehensive way.

Community Development Director, Brad Mueller, asked whether it was the preference of the Commission to address Chair Yeater's concerns now or in the future and reminded the Commission that staff has been asked by the City Manager's Office to look at additional tools to assist with enforcement. He noted the limited number of Code Compliance inspectors and available resources. Mr. Mueller stated that there is a metric to record observed violations and that in terms of enforcing the family definition, the tools to enforce remain limited to a “knock and talk” and reliance on the information reported. He committed to looking at the issue in the future.

IV. Public hearing to consider amendments to Title 24 of the 2021 Greeley Municipal Code to adopt Chapter 1 (General Provisions) and Chapter 2 (Procedures) as part of the overall code update to be adopted by ordinance at a future date

Project: Title 24 – Chapters 1 & 2, Development Code Update

Case No.: CU2021-0002 & CU2021-0003

Applicant: City of Greeley, Community Development Department

Presenter: Carol Kuhn, Chief Planner

Carol Kuhn addressed the Commission and advised that the item was to adopt Chapters 1 and 2 of the Development Code and hold a public hearing on the items. She revised the schedule of Planning Commission and City Council meetings, hearings and worksessions.

Ms. Kuhn advised that although Chapter 1 had previously been brought before the Commission as a hearing item, it was being brought back today due to a revised adoption schedule requiring a modified recommendation by the Commission. She acknowledged the typographical errors identified by Commissioner Andersen and stated that they will be corrected and captured in the final document that will be presented to City Council.

Ms. Kuhn briefly reviewed the provisions of Chapter 1 presented at an earlier hearing and summarized the proposed revisions. She presented a section map for Chapter 2 and advised that a summary table has been added that distills all applicable processes into a single table for ease of use. Ms. Kuhn described several of the enhancements to the Planned Unit Development and Subdivision processes, noticing requirements, enhanced signage, and clarity for handling concurrent applications. She clarified the review criteria regarding alternative compliance, including clarification of the variance approval criteria.

Ms. Kuhn described efforts to provide notice of the hearing, including publication in the newspaper and posting on the City website. She added that referrals were sent to other jurisdictions and that staff had sent the proposed revisions to applicants who had submitted projects during the past two years for comment,

adding that at least one applicant had responded and was in favor of the revisions. Staff recommended approval of the proposed revisions to Title 24, Chapters 1 and 2 and offered to answer questions.

Commissioner Andersen asked about the revisions regarding alternative compliance and sought to clarify whether it would allow flexibility for staff to achieve compliance without the necessity to require a variance request. Ms. Kuhn advised that the Code already contains an alternative compliance option, adding that the revised language will allow more decisions at the staff level with requests coming to the Commission as necessary. She explained the rationale for changing the variance criteria and advised that applicants would still have the ability to appeal decisions to the Planning Commission. Chris Brewster addressed the Commission and added that an applicant would have the ability to appeal to the Commission if a request for alternative compliance is denied. He stated that the goal is to make alternative compliance and variances distinct actions where alternative compliance deals more with design standards.

Upon question by Commissioner Modlin, Ms. Kuhn advised that the Code currently does not address timelines or expiration dates associated with land use applications. She stated that in the past, an applicant may submit an application and never be heard from again, adding that an expiration date would cause a case to be closed due to inactivity. Ms. Kuhn added that staff strives to move applications quickly and that most are reviewed in two to three weeks.

Upon question by Commissioner Schulte, Ms. Kuhn advised that to date staff has not undertaken random samples of applications to analyze how Code revisions might have impacted the number of hearings, amount of staff time to determine if the revisions will achieve greater efficiency. She added that Chapters 1 and 2 deal more with "housekeeping" items. Commissioner Schulte asked whether there was a sense of how many of variance requests before the Commission might have been denied because all criteria had not been met. He also asked how any variance requests might have been resolved prior to a hearing based on the new alternative compliance criteria being proposed. Ms. Kuhn responded that staff had not done that analysis, adding that the proposed revisions go along with the flexibility being built into the residential standards and commercial standards.

Chair Yeater opened the public hearing at 2:15 p.m. There being no communication by U.S. mail, email, Zoom Chat or Q&A, the public hearing was closed at 2:15 p.m.

Commissioner Romulo moved that, based on the project summary and attached drafts of Chapters 1 and 2, the Planning Commission finds that the proposed revisions to Chapters 1 and 2 are consistent with the City's Comprehensive Plan and are necessary and appropriate in meeting the intent of the Comprehensive Plan and to clarify administration of the Development Code, and recommends that the City Council adopt Chapters 1 and 2 of Title 24 as shown in Attachments A and C. Commissioner Andersen seconded the motion.

Chair Yeater noted that after going through a rezone process personally, the proposed revisions answer many of the questions and provide clear expectations. He was excited to see how this will help with future development.

Motion carried 7-0.

V. Staff Report

Mr. Mueller thanked members of the Commission for their time and effort in deliberating complicated items. Chair Yeater offered his thanks to everyone for dedicating their time and providing feedback to reach a conclusion toward improving the existing household occupancy standard, adding that he valued the feedback offered by each member and appreciated everything they do to serve the citizens of Greeley.

VI. Adjournment

With no further business before the Commission, Char Yeater adjourned the meeting at 2:25 p.m.

Justin Yeater, Chair

Brad Mueller, Secretary

Amending Title 24 to Adopt Chapter 1 – General Provisions and Chapter 2 – Procedures

CU2021-0002 & CU2021-0003

City Council Public Hearing

June 15, 2021

Chapters 1 & 2 – Adoption Process

- **Work sessions Technical Committee, PC, CC**
- **PC Public Hearing**
 - **May 18, 2021 – Recommendation for approval**
- **CC Adoption**
 - **June 1, 2021 (1st Reading)**
 - **June 15, 2021 (Public Hearing)**
 - **September 21, 2021 – CC 2nd Reading (no public comment planned)**

Chapter 1

Chapter 1. General Provisions

Section 24-101	Overview
Section 24-102	Interpretation
Section 24-103	Administration
Section 24-104	Enforcement
Section 24-105	Nonconformities

Chapter 1 - Summary

- **Tie to existing plans & strategies**
 - **Comp Plan; parks, trails & civic spaces; street design & multi-modal networks; housing opportunities; coordinated development**
- **Resources, guides, and industry standards**
- **Clear intent statements**
- **Nonconforming uses**
 - **Single-family not permitted in a zone district may be enlarged**
 - **Benign Nonconformities**

Chapter 2

Chapter 2. Procedures

- 24-201 General – All Applications
- 24-202 Minor Subdivision
- 24-203 Major Subdivision
- 24-204 Rezoning
- 24-205 Planned Unit Development
- 24-206 Use by Special Review
- 24-207 Site Plan
- 24-208 Alternative Compliance
- 24-209 Variance
- 24-210 Appeals of Administrative Decision
- 24-211 Code Amendments
- 24-212 Vacation & Dedication of Easements
- 24-213 Vacation & Dedication of Right-of-way
- 24-214 Annexation

Chapter 2 - Summary

- **Addition of a Procedures Summary Table**
- **Revision to Preliminary Plats**
- **Clarification regarding processing concurrent applications**
- **Modifications to public notice procedures**
- **Addition of a Condominium Plat process**
- **Separation of plats from Planned Unit Development's (PUD)**
- **Clarification regarding plan elements of a PUD**
- **Addition of criteria for minor PUD amendments**
- **Clarification to Alternative Compliance review criteria**
- **Revision to require variances to meet all criteria**
- **Revision to minor variance thresholds**

Chapters 1 & 2 – Notice & Comments

- **Notice published in the Greeley Tribune**
- **Drafts posted on the City's website**
- **Referrals were sent to neighboring communities**
- **No comments received from the public or referral agencies**

Recommendation

- **Recommend approval of the proposed revisions to Title 24, Chapters 1 and 2**
- **Recommended Motion:**
A motion to direct staff to bring back the ordinance as presented for a second reading on September 21, 2021.

Council Agenda Summary

Key Staff Contact: Brad Mueller, Community Development Director, 970-350-9786

Kira Stoller, Planner, 970-336-4050

Title:

Public hearing to consider a request for a combined Preliminary/Final PUD (Planned Unit Development) approval for an auto repair use on property located at 2505 46th Avenue, and a final plat and site plan for the Suffolk Subdivision 4th Filing, 1st Amendment

Summary:

City Council approved the original Suffolk Preliminary PUD in 2004. This request is for a combined Preliminary/Final PUD for an auto repair facility, including approval of the corresponding site plan. The final plat associated with this request would subdivide the existing parcel into two lots. The Planning Commission considered the request on May 25, 2021 and unanimously recommended approval to City Council.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

Consideration of this matter is a quasi-judicial process which includes the following public hearing steps:

- 1) City staff presentation
- 2) Council questions of staff
- 3) Applicant presentation
- 4) Council questions of applicant
- 5) Public input (hearing opened, testimony - up to three minutes per person, hearing closed)
- 6) Staff and applicant responses, as applicable
- 7) Council discussion
- 8) Council decision

Other Issues and Considerations:

None noted.

Applicable Council Priority and Goal:

Consistence with Comprehensive Plan and Development Code standards.

Decision Options:

- 1) Approve the proposal as presented; or
- 2) Amend the proposal and approve as amended; or
- 3) Deny the proposal; or
- 4) Continue consideration of the proposal to a date certain.

Council's Recommended Action:

A motion that, based on the project summary and accompanying analysis, the proposed combined Preliminary and Final PUD for an auto repair use, located at 2505 46th Avenue, and a final plat and site plan for the Suffolk Subdivision 4th Filing, 1st Amendment, are in compliance with the Development Code and are therefore approved.

Attachments:

Planning Commission Minutes – Draft (May 25, 2021)
Planning Commission Summary (Staff Report) (May 25, 2021)
Public Correspondence, received after the Planning Commission Hearing
PowerPoint Presentation

VI. Public hearing to consider a request for a combined Preliminary and Final PUD to allow for an auto repair facility on approximately .59 acres

Project: Suffolk Subdivision 4th Filing, 1st Amendment, Combined Preliminary & Final PUD

Case No.: PUD2020-0013

Applicant: Elliott Smith of TerraForm Companies, LLC

Location: 2505 46th Avenue

Presenter: Kira Stoller, Planner II

Ms. Stoller addressed the Commission and introduced the project as a combined Preliminary and Final PUD within the Suffolk Subdivision. She presented an aerial photo showing the site and surrounding area – located directly south of Lowe's, north of Firestone, east of G.O.A.T. Sports Bar and west of Goodwill. The subject site is surrounded by private drives on the north, west and south. Ms. Stoller presented a photo of the subject site with Goodwill and Lowe's in background and additional photos of surrounding areas and businesses.

Ms. Stoller provided background information of the original Suffolk PUD- encompassing 38.48 acres of land and identified 4 lots and 2 outlots. The subject site was originally part of Lot 2 and allowed for uses permitted in Commercial High zone district. She noted that the surrounding area is largely developed. The applicant is proposing a Replat of the Suffolk Subdivision, 4th Filing, Lot 2A- a 2.16 acres parcel. Ms. Stoller presented the proposed plat that subdivides Lot 2A of Suffolk Subdivision into two lots; Lot 2, south, would house the 3,174 square foot auto repair facility; Lot 1 would be developed at a later date and would still allow land uses permitted in the Commercial High zone district.

Ms. Stoller presented a site plan of the proposed auto repair facility, pointed out the site access from private drive to the south, nine parking spaces and four bike stalls, and described building setbacks. The applicant has designed landscaping to provide 42% open space; consist of 12 trees and over 100 shrubs and ornamental grasses. Additional, Ms. Stoller noted five light poles situated on the outer edge of parking lot and access drives. Ms. Stoller presented building elevations, described the building materials and stating the proposed colors are similar to existing buildings in the surrounding area. Ms. Stoller noted that signage displayed on plans are for illustrative purposes only and the actual signage will require approval under separate permit.

Ms. Stoller summarized the approval criteria for a Preliminary PUD and Final PUD, stating that the current subject site is approximately 2.16 acres in size; however, corresponding replat would create smaller lots. Because the site is, currently zoned PUD and allowed uses have been established for both proposed lots, Staff feels the project aligns with the spirit of the code and is consistent with the Comprehensive Plan. Additional, Ms. Stoller stated that various PUD approvals in the past have encompassed the subject site and the land use proposal of an auto repair facility is in conformance with proceeding plans. Because no site development details were provided as part of the previous approvals, a separate Preliminary and Final PUD was required to develop the site. Notice letters were mailed to 18 owners within 500 feet of the site, signs were posted and

legal notice was provided in the local newspaper on May 19, 2021 with no comments received. Staff recommended approval.

Commissioner Andersen asked what the rationale was behind limiting auto repair in Commercial High zone and the purpose of hearing and overlay PUD approval. Ms. Stoller explained that the previous Suffolk preliminary PUD just identified the allowed uses for the different areas/lots. Although the subject site allows for all uses permitted in the commercial high intensity zone district, including auto repair, the previous PUD approvals indicated that a Preliminary and Final PUD approval would be required to establish the specific site design for the property. Commissioner Andersen commented that it seems strange that this project is brought before Planning Commission when there are identical uses surrounding it. Ms. Stoller explained that it is due to the PUD zoning and current PUD regulations. Furthermore, Ms. Stoller added that with the Code Update that is currently in progress, Staff want to get to a point where these type of projects are handled administratively with a site plan process.

Elliott Smith, TerraForm Companies, LLC. 6770 S 900 E Salt Lake City, Utah, addressed the Commission and stated they would be developing property for Jiffy Lube. He added that he was available to answer any questions and thanked the Commissioners for their time.

Vice Chair Briscoe opened the public hearing at 2:16 p.m. There being no communication by U.S. mail, email or Zoom Chat or Q&A, the public hearing was closed at 2:16 p.m.

Commissioner Andersen moved that, based on the project summary and accompanying analysis, the Planning Commission finds that the proposed combined Preliminary and Final PUD for an auto repair use, located at 2505 46th Avenue, and a final plat and site plan, for the Suffolk Subdivision 4th Filing, 1st Amendment, is in compliance with the Development Code; and, therefore, recommends approval to City Council. Commissioner Franzen seconded the motion. Motion carried 4-0.

VII. Staff Report

Community Development Director, Brad Muller thanked the Commission for attending and in interest of time, defer to next item on the agenda.

VIII. Worksession: Development Code Update – Chapters 7, 8, 9, 10 & 11

Carol Kuhn addressed the Commission and briefly reviewed the topical discussions held to date as well as discussions for upcoming worksessions and hearings before Planning Commission and City Council. Ms. Kuhn reported that staff has been working closely with the Technical Review Committee and other stakeholders and presented a schedule displaying the process for Chapters 7-11 of the Development Code.

PLANNING COMMISSION SUMMARY

ITEM: Combined Preliminary and Final PUD (Planned Unit Development) for auto repair use in the Suffolk PUD

FILE NUMBER: PUD2020-0013

PROJECT: Suffolk Subdivision 4th Filing, 1st Amendment, Combined Preliminary & Final PUD

LOCATION: 2505 46th Avenue

APPLICANT: Elliott Smith, of TerraForm Companies, on behalf of Mo Choudhry

CASE PLANNER: Kira Stoller, Planner II

PLANNING COMMISSION HEARING DATE: May 25, 2021

PLANNING COMMISSION FUNCTION:

Review the proposal for compliance with Section 24-663 and Section 24-673 of the City of Greeley Development Code and approve, approve with conditions, or deny the request.

EXECUTIVE SUMMARY

A. REQUEST

The applicant is requesting approval of a combined Preliminary and Final PUD for an auto repair facility on property located at 2505 46th Avenue (*see Attachment A – Vicinity Map*), and a final plat and site plan, for the Suffolk Subdivision 4th Filing, 1st Amendment (*see Attachment B – Applicant Narrative*).

B. STAFF RECOMMENDATION

Approval

C. LOCATION

Abutting Zoning

North: PUD (Planned Unit Development)

South: PUD (Planned Unit Development)

East: PUD (Planned Unit Development)

West: PUD (Planned Unit Development)

Surrounding Land Uses

North: Retail (Lowe's Home Improvement)

South: Auto repair (Firestone Complete Auto Care)

East: Restaurant (The G.O.A.T. Sports Bar)

West: Retail (Goodwill)

Site Characteristics

The subject site is 2.16 acres in size and has not been previously developed. The property is generally located north of Centerplace Drive and west of 46th Avenue, with private access drives located along the north, south and west boundaries of the site.

D. BACKGROUND

The original Suffolk Preliminary PUD (Case No. PUD 10:03) encompassed a total of 38.48 acres of land, located south of 24th Street and east of 47th Avenue. The PUD identified four lots and two outlots with the following land use designations: Lot 1 – Lowe’s Home Improvement store, Lot 2 – uses allowed in the C-H (Commercial High Intensity) zone, Lot 3 – uses allowed in the R-M (Residential Medium Density) zone, Lot 4 – uses allowed in the R-H (Residential High Density) zone, Outlot A – open space, and Outlot B – stormwater detention. The Preliminary PUD was approved by City Council on January 6, 2004. The corresponding Final PUD (Case No. PUD 2:04) included site details for the proposed Lowe’s Home Improvement store, as well as the associated plat, which formally established the four lots and two outlots identified in the Preliminary PUD, and was approved by the Planning Commission on April 13, 2004.

Lot 2 of the Suffolk Preliminary PUD developed gradually. The western third of the site was approved for a McDonald’s restaurant in 2006 (rec # 3464670). A plat was recorded in conjunction with this application and subdivided Lot 2, into two new lots. McDonald’s developed on Lot 1 and the new Lot 2 remained vacant until 2012. At that time, a Preliminary and Final PUD was approved for a Goodwill retail store (rec # 3937069). Another replat was also filed to split Lot 2 into Lot 1A and Lot 2A. Goodwill developed on Lot 1A and Lot 2A has remained vacant until now.

The current request is for a combined Preliminary and Final PUD for a 3,174 square foot auto repair facility, the initial user is proposed to be a Jiffy Lube facility. Additionally, the applicant is proposing a replat of the Suffolk Subdivision, Fourth Filing. The replat would subdivide Lot 2A into two new lots as follows: Lot 1 would contain 1.57 acres and Lot 2 would be 0.59 acres in size (*see Attachment F – Plat*). The proposed auto repair facility would be situated on the newly platted Lot 2. Lot 1 would be developed at a later date and require a separate Preliminary and Final PUD approval, but would still allow those land uses permitted in the C-H (Commercial High Intensity) zone district.

E. APPROVAL CRITERIA

The review criteria found in Section 24-663 of the Greeley Development Code shall be used when considering a Preliminary PUD approval request.

1. Does the Preliminary Plan meet the standards for PUD establishment?

- A. *Area requirements. The area of a proposed PUD shall be of substantial size to permit its design and development as a cohesive unit fulfilling the stated purpose of these regulations and to establish the PUD as a meaningful part of the larger community. Each proposed PUD shall therefore be evaluated as to its adequacy in size with respect to both the nature and character of its internal design and to its specific location within*

the City. The minimum size of a PUD to be considered for establishment shall be two (2) acres.

Staff Comment: The overall property is approximately 2.16 acres in size, however, as part of the proposed Preliminary and Final PUD, the applicant intends to split the property into two lots. Lot 2 would be 0.59 acres in size and house the proposed auto repair facility. Lot 1 would be 1.57 acres and is to be developed at a later date, via a separate Preliminary and Final PUD approval. Because the subject site is already zoned PUD and allowed uses have been established for both proposed lots, staff feels that splitting the property into two separate parcels, each of which will be less than two acres in size, still aligns with the spirit of the Code.

The proposal complies with this criterion.

- B. *Consistency with the Land Use Chapter of the Comprehensive Plan. A PUD proposal shall be found to be consistent with all applicable elements of the Land Use chapter of the City's adopted Comprehensive Plan with respect to its proposed internal design and use and its relationship to adjacent areas and the city as a whole before it may be zoned as a PUD.***

Staff Comment: The subject site is already zoned PUD and prior approvals designated that the permitted lands uses would be those allowed in the C-H (Commercial High Intensity) zone. Auto repair (on sites less than an acre in size) is permitted in the C-H zone district and would normally require a Design Review approval. In this instance, the combined Preliminary and Final PUD, serves as the site plan approval. The proposed land use is consistent with the Imagine Greeley, Land Use Guidance Map, which labels the property as an employment, industrial and commercial area. The project also directly aligns with the following objectives from the *Imagine Greeley Comprehensive Plan (2018)*:

Objective GC-1.2 Form of Growth: Encourage a compact urban form over sprawl or leap-frog development.

Objective GC-1.3 Adequate Public Facilities: Restrict development to the Adequate Public Facilities Area (APFA) except where the developer provides the equivalent level, or cash-in-lieu at a rate determined by the City, to install infrastructure that would otherwise be provided by the City.

Objective GC-4.3 Infill Compatibility: Promote the use of site design and building architecture that is sympathetic to the

surrounding area and enhances the desirable character and form of the neighborhood or area.

The subject site is located in an area that is almost fully built out and adequate public facilities already exist in the immediate vicinity. In addition to supporting an urban form of growth, the proposed building architecture is very similar to that of the existing structures in the area.

The proposal complies with this criterion.

The review criteria found in Section 24-673 of the Greeley Development Code shall be used when considering a Final PUD approval request.

2. Is the Final PUD plan in substantial conformance with the approved preliminary PUD?

Staff Comment: There have been various preliminary PUD approvals which encompassed the subject site and the proposed land use of an auto repair facility is in conformance with these preceding plans. However, because no site development details were provided, the previous approvals indicated that a separate Preliminary and Final PUD would be required for the property to be developed.

The proposal complies with this criterion. Additional details regarding the proposed site design for the auto repair facility are outlined below.

Building Elevations - The proposed building design would utilize two primary materials on the exterior of the structure. The base of the building would be finished with a stone wainscot and exterior insulation and finish system (EIFS) above (*see Attachment E – Building Elevations*). The proposed colors would be similar to the existing buildings in the surrounding area and the architecture provides a varied roof-line. The building would include three service bays and two customer entrances on the east and west sides of the structure.

Setbacks – A 25 foot setback is required along 46th Avenue. No other standard setbacks apply, however, the following approximate measures would be provided from the auto repair facility to the adjacent lot lines:

North – 21 feet (from new lot line designated on the proposed replat)

East – 61 feet (from 46th Avenue right-of-way)

South – 10 feet (from existing private drive)

West – 100 feet (from existing private drive)

Landscaping – The applicant has designed the site to provide 42% open space. The site landscaping would consist of twelve trees and over 100 shrubs and ornamental grasses.

Additionally, sodded lawn areas will be provided along the east and west boundaries of the site (see Attachment D – Landscape Plan).

Signage – All site signage would be required to meet the Development Code standards for the C-H (Commercial High Intensity) zone district, and as amended. All signage shown on the plans is for illustrative purposes only and will require review and approval under a separate permit.

Photometrics – The site lighting must comply with the commercial standards of the Development Code, and as amended. Five (5) freestanding light fixtures, with a maximum height of 20 feet are proposed along the parking lot and internal driveway.

Parking and Circulation - The applicant is proposing nine (9) parking spaces, which meets the code requirement for auto repair facilities, based on proposed building square footage. Pedestrian access would be available from 46th Avenue and four (4) bicycle stalls would be provided on site. The subject site would have one vehicle access point from the existing private drive to the south, which connects directly to 46th Avenue. The service bays would be accessed on the west side of the building and exited to the east, utilizing the circular drive around the north side of the structure (see Attachment C – Site Plan).

F. PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site was originally platted as a portion of Lot 2 of the Suffolk Subdivision on May 4, 2004 (rec # 3176444). On November 3, 2006, the Suffolk Subdivision, Second Filing further divided Lot 2 (rec # 3432357). The existing 2.16 acre lot was created via a resubdivision of Lot 2, Suffolk Subdivision, Second Filing and is currently designated as Lot 2A. This replat was recorded on January 24, 2013 (rec # 3905145) and is known as Suffolk Subdivision, Fourth Filing. The proposed replat associated with this combined Preliminary and Final PUD would be Suffolk Subdivision, Fourth Filing, First Replat.

2. HAZARDS

Staff is unaware of any hazards on the property.

3. WILDLIFE

The subject site is not located within an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

The property slopes to the southeast and the site would be graded to direct runoff away from the building and towards the curb and gutter or concrete valley pan in the parking lot. The proposed infrastructure would route runoff from the new on-site inlet to the private drive south of the subject site, where an existing 30” stormwater pipe is located. Flows from the proposed project would be less than what was anticipated by previous drainage studies and therefore would not have an adverse impact on downstream drainage facilities.

Stormwater detention and water quality treatment would be provided off site, in the existing regional detention pond to the east of 46th Avenue.

6. TRANSPORTATION

The subject site has frontage along 46th Avenue and one point of access to the development is proposed from the existing private drive to the south. Greeley-Evans Transit (GET) provides service to the area along Centerplace Drive, just east of 46th Avenue. The proposed auto repair facility is anticipated to average 48 vehicles per day, which would result in an insignificant impact to the existing level of service (LOS) for the adjacent streets and intersections.

7. SERVICES

The City of Greeley provides water and sanitary services to the area. The property is served by the City of Greeley's Police and Fire Departments. Fire Station #5 is located along 47th Avenue, less than a half mile northwest of the subject site.

H. NEIGHBORHOOD IMPACTS

1. VISUAL

The construction of the proposed structure would result in a visual change to the site, since the property is currently vacant.

2. NOISE

Any potential noise created by future development would be regulated by the Municipal Code.

I. PUBLIC NOTICE AND COMMENT

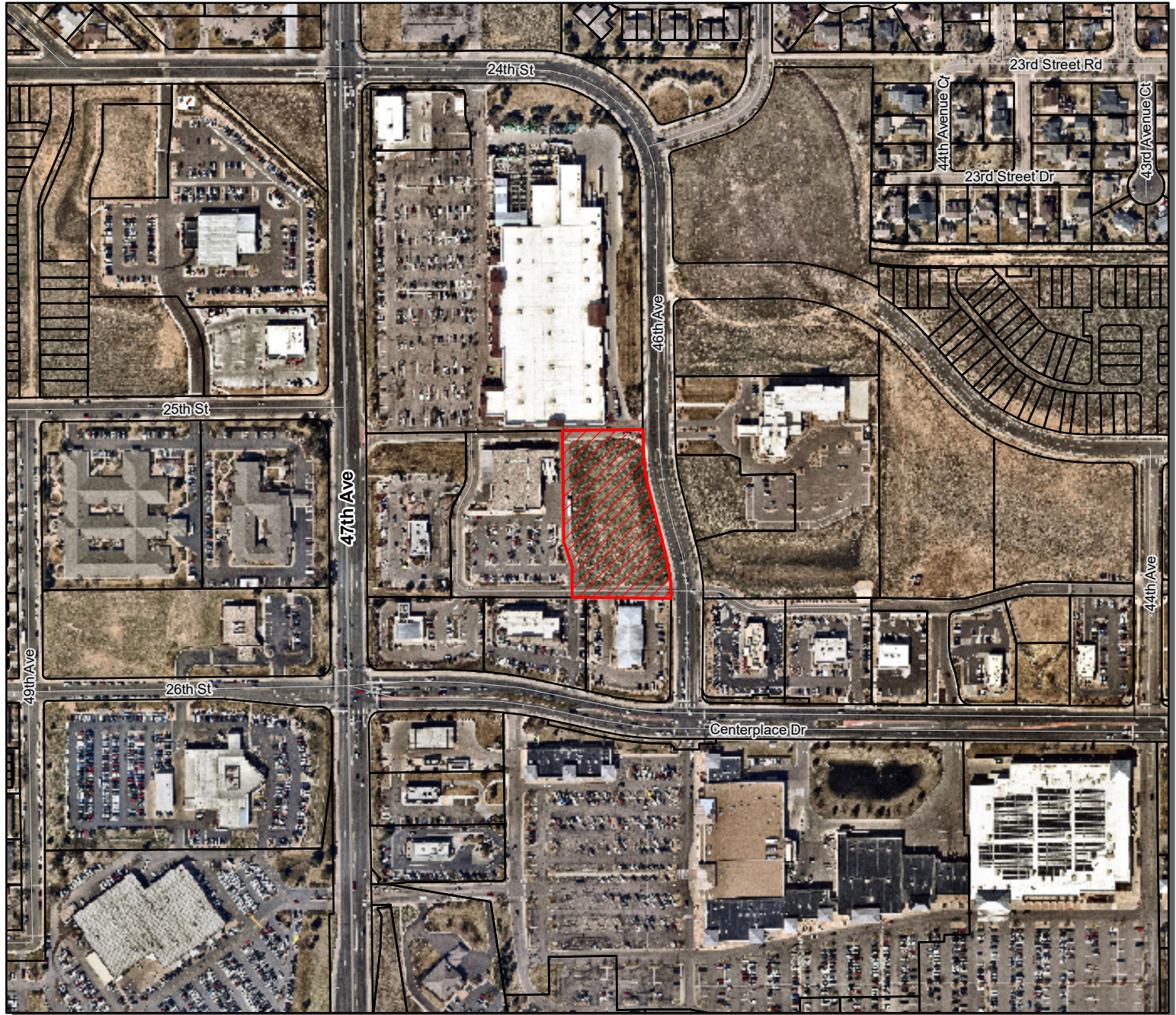
Letters regarding the public hearing for the proposed Preliminary & Final PUD were mailed on May 10, 2021, to property owners within 500 feet of the site. Notice signs were posted on the site on May 14, 2021. Public notice was also published in the newspaper on May 19, 2021. No comments have been received to date, May 19, 2021.

J. PLANNING COMMISSION RECOMMENDED MOTION

A motion that, based on the project summary and accompanying analysis, the Planning Commission finds that the proposed combined Preliminary and Final PUD for an auto repair use, located at 2505 46th Avenue, and a final plat and site plan, for the Suffolk Subdivision 4th Filing, 1st Amendment, is in compliance with the Development Code and, therefore, recommend approval to City Council.

ATTACHMENTS

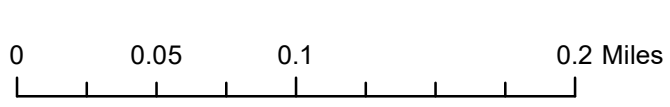
Attachment A – Vicinity Map
Attachment B – Applicant Narrative
Attachment C – Site Plan
Attachment D – Landscape Plan
Attachment E – Building Elevations
Attachment F – Plat



Legend

-  Subject Site
-  Parcels

**Suffolk Subdivision 4th Filing, 1st Amendment
Combined Preliminary & Final PUD
PUD2020-0013**





June 25, 2020

Greeley City
Community Development Department
1100 10th Street, 2nd Floor
Greeley, CO 80631

RE: Proposed Jiffy Lube Narrative – Centerplace Drive and 46th Avenue, Greeley, CO 80634

Community Development Department:

The purpose of this letter is to provide a narrative for a proposed new construction built to suit our firm plans to do for Jiffy Lube located on the corner of Centerplace Drive and 46th Avenue, Greeley, CO 80634.

The site consists of .59 acre with frontage along 46th Avenue. The new wood framed single story building with service pit will be 3,174 square feet. Building exterior finishes consists primarily of stucco and stone. There are 13 parking stalls on the site plan. There are 3 service bays and the tenant will offer services such as oil change, brakes and tires and other minor vehicle maintenance items and vehicles will not be left on the premises overnight either in the parking lot or in the bay work area. The operating hours are generally 8:00am to 6:00pm Monday through Friday with shortened hours on Saturday and Sunday.

This proposed use does not comply with the zoning designation for the property PUD and will require a Preliminary and Final PUD application process. The use is conducive to uses on surrounding properties and will not pose a detrimental impact to the area. The access and utility infrastructure to the site is sufficient for the intended use.

The site will feature a single-story retail building. A representative rendered elevation has been included with this submittal. Exterior building materials will be compatible with building architecture, materials and massing of adjacent buildings. It will consist of an EIFS exterior with a light textured finish with base wainscot color breaking up overall primary wall. Bronze canopies will define the entry and exit points for customers.

The building exceeds the Architectural Standards as described in Section 18.40.90. The building does not have an appear have an appearance of a single, large or dominant mass. Instead, it uses design techniques to step back portions of the build, variation in rooflines, and variation in colors. Essentially all sides of the building incorporate design features – not just the front façade facing 46th Avenue.

The building uses four (4) of the five (5) groupings from the following building elements (as required in section 18.40.090 (10):

Group 1 - exterior wall articulation.

1. Changes in building plane or articulation (recesses, projections) spaced proportionately around the building exterior walls, with recesses and projections as defined in Subsection (4) above; or
2. Buildings bays created by columns, ribs, pilasters or piers or an equivalent element that divides a wall into smaller proportions or segments with elements being at least one (1) foot in width and spaced at intervals of no more than thirty percent (30%) of the exterior building walls; or
3. Some other architectural feature or treatment which breaks up the exterior horizontal and vertical mass of the building.

b. Group 2 - roof articulation.

1. Changes in roof lines, including the use of stepped cornice parapets, a combination of flat and sloped roofs, or pitched roofs with at least two (2) roof line elevation changes; or
2. Some other architectural feature or treatment which breaks up the exterior horizontal and vertical mass of the building.

c. Group 3 - building openings, walkways and entrances.

5. Some other architectural feature or treatment which adds definition to the building openings, walkways or entrances.

d. Group 4 - building materials.

2. A single material as long as design treatments such as different roof lines, number of stories, window and door style and placement, and/or garage placement are used to create an interesting and varied exterior.

I look forward to receiving your feedback. Please let me know if you need additional information.
Thank you for your time and consideration.

Sincerely,
TERRAFORM COMPANIES



Elliott B. Smith
Managing Partner

A PORTION OF LOT 2A, SUFFOLK SUBDIVISION FOURTH FILING
LOCATED IN THE SW 1/4, SECTION 14, T. 5 N., R. 66 W., 6TH P.M.
CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO

GROSS FLOOR AREA	3,174 S.F.
GROSS PROJECT (SITE) AREA	0.59 ACRES (25,627 S.F.)
NET PROJECT (SITE) AREA	0.59 ACRES (25,627 S.F.)
HEIGHT OF STRUCTURES	22'-2" (1 STORY)
FLOOR AREA RATIO	0.13
ZONING:	PUD (PLANNED UNIT DEVELOPMENT)
PROPOSED USE:	AUTO REPAIR
CONSTRUCTION TYPE:	VB, NOT SPRINKLERED
OCCUPANCY GROUP:	M-MERCANTILE
NUMBER OF EMPLOYEES:	10

PARKING ANALYSIS	REQUIRED	PROVIDED
TOTAL PARKING	9	9
STANDARD PARKING	8	8
ADA PARKING	1	1
BICYCLE PARKING	3	4

GROUND COVERAGE BY STRUCTURES	3,308 S.F. (13%)
GROUND COVERAGE BY OTHER IMPERVIOUS ELEMENTS	11,671 S.F. (45%)
GROUND COVERAGE BY LANDSCAPING/OPEN SPACE	10,648 S.F. (42%)

1. THE APPLICANT IS ONLY APPLYING FOR APPROVAL FOR AUTO REPAIR USE AND ACKNOWLEDGES THAT IF AN ALTERNATIVE USE IS REQUIRED IN THE FUTURE, ANOTHER PRELIMINARY AND FINAL PUD PROCESS WILL BE REQUIRED.
2. BUILDING ARCHITECTURE WILL ALIGN WITH THE COMMERCIAL STANDARDS OF THE DEVELOPMENT CODE, AS AMENDED.
3. SITE LIGHTING WILL ALIGN WITH THE COMMERCIAL STANDARDS OF THE DEVELOPMENT CODE, AS AMENDED.
4. SITE SIGNAGE WILL ALIGN WITH THE DEVELOPMENT CODE STANDARDS FOR THE C-H (COMMERCIAL HIGH INTENSITY) ZONE DISTRICT, AS AMENDED.
5. LOT 1 WILL BE DEVELOPED AT A LATER DATE AND WILL REQUIRE A SEPARATE PRELIMINARY AND FINAL PUD APPROVAL. PERMITTED LAND USES FOR LOT 1 ARE THOSE USES ALLOWED BY THE C-H (COMMERCIAL HIGH INTENSITY) ZONE DISTRICT. THIS IS BASED UPON THE PREVIOUS PUD APPROVAL - #3464670.

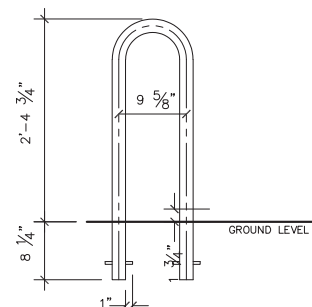
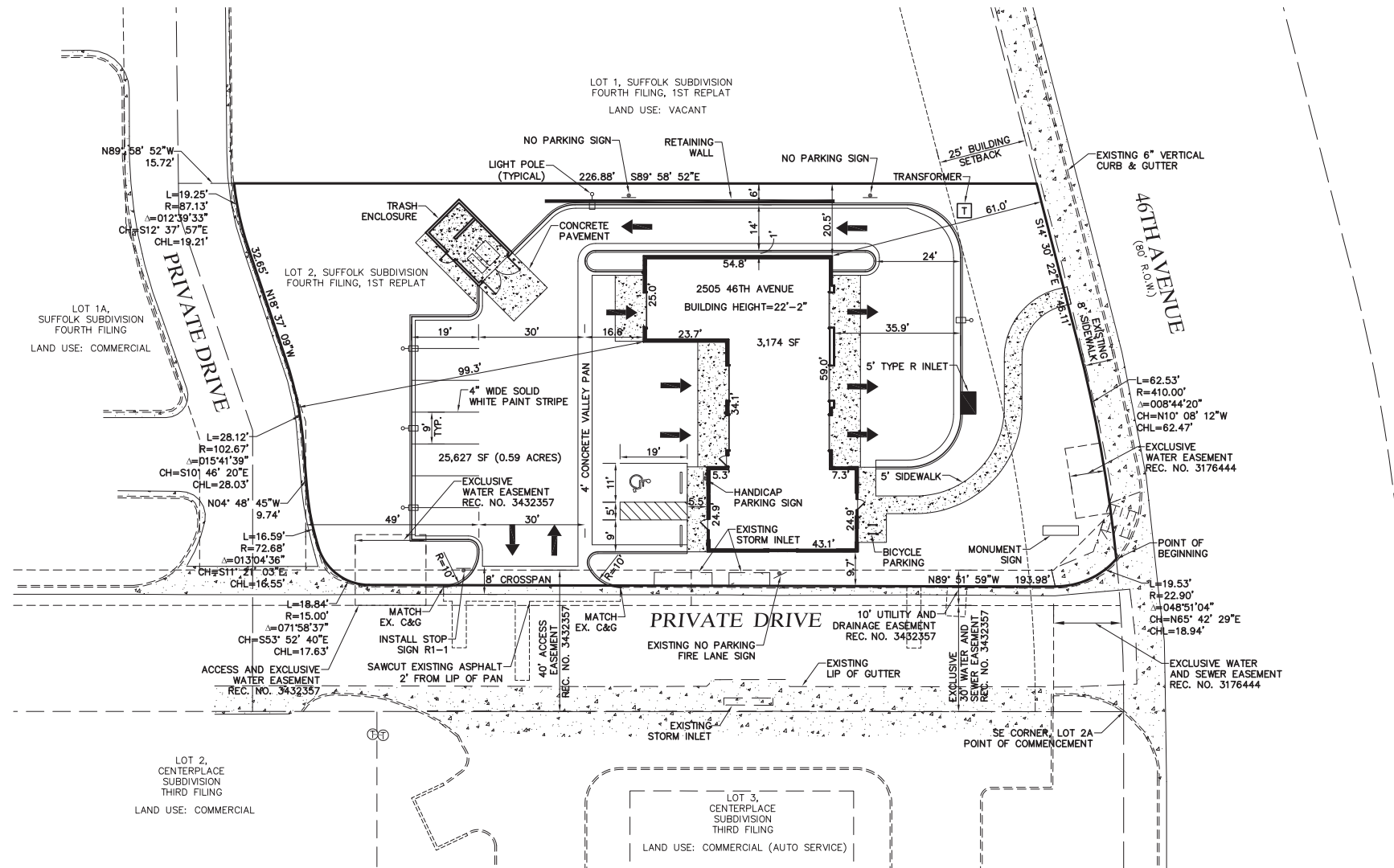
	PROPERTY LINE
	EXISTING CURB & GUTTER
	PROPOSED 2' CATCH CURB & GUTTER
	PROPOSED 1' SPILL CURB & GUTTER
	EXISTING RIGHT-OF-WAY
	EXISTING EASEMENT
	CONCRETE PAVEMENT
	PROPOSED LIGHT POLE
	PROPOSED SIGN

ENGINEERING _____
INITIALS/ DATE

PLANNING _____
INITIALS/ DATE

OWNER _____
INITIALS/ DATE

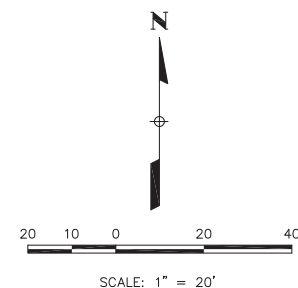
Page 582



MODEL #	DIM. (A)	NO. OF LOOPS
TB - 5	38.38"	3

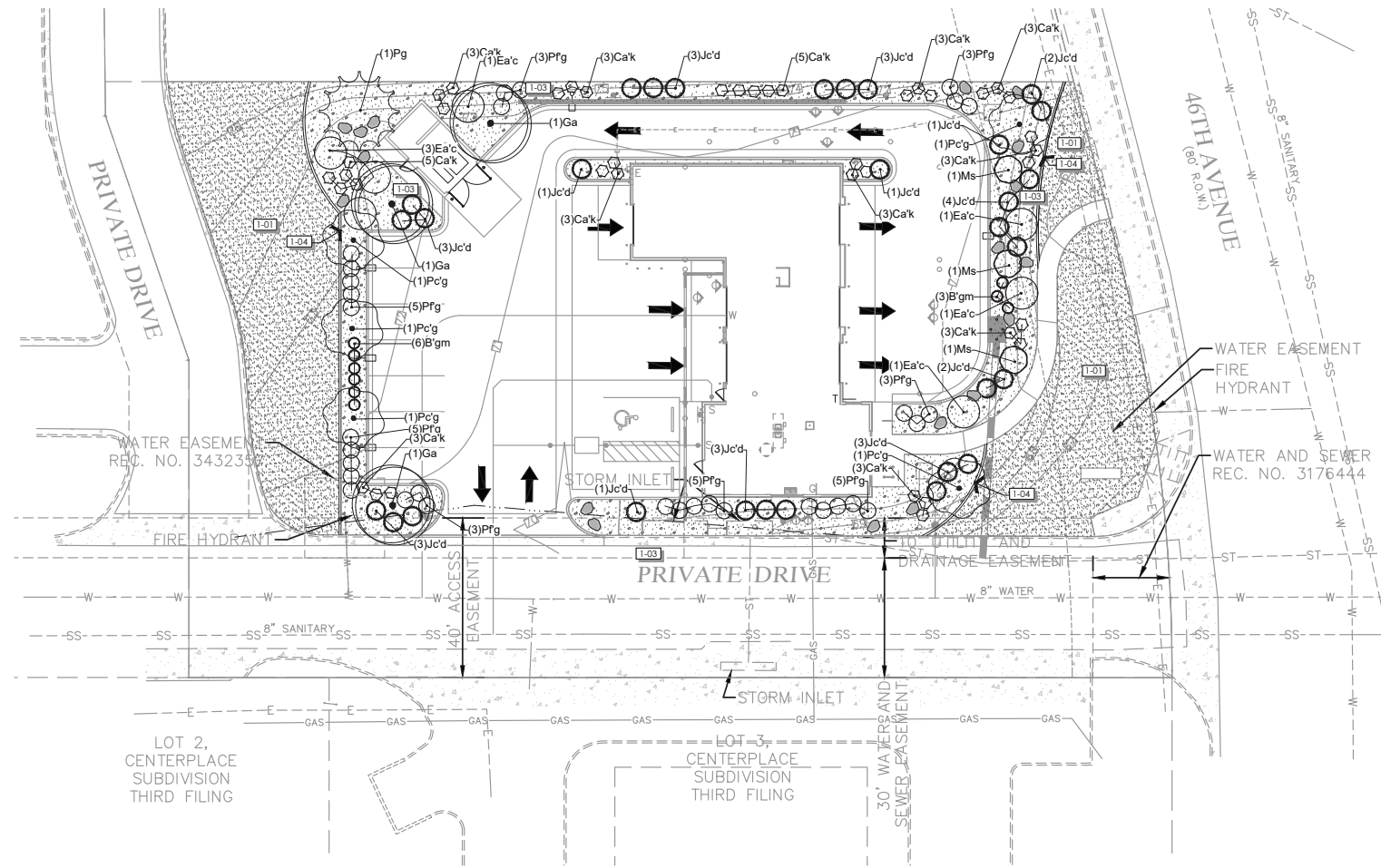
CREATIVE PIPE
TB - SERIES BIKE RACKS
MATERIAL: 2" SCH. 40 PIPE
FINISH: STANDARD - HOT-DIP GALVANIZED

BICYCLE RACK DETAIL



COMBINED PRELIMINARY AND FINAL PUD
SUFFOLK SUBDIVISION FOURTH FILING PUD, 1ST AMENDMENT

A PORTION OF LOT 2A, SUFFOLK SUBDIVISION FOURTH FILING
LOCATED IN THE SW 1/4, SECTION 14, T. 5 N., R. 66 W., 6TH P.M.
CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO



SITE REQUIREMENT CALCULATIONS

<u>STREET FRONTAGE</u>		
<u>PLANT COUNT:</u>	<u>REQUIRED:</u>	<u>PROVIDED:</u>
46TH AVENUE (117 LN. FT.)		
1 TREE PER 25 LINEAR FT.	5	5
PERIMETER TREATMENT: PER 100 LN. FT. (NOT STREET TREES)		
-FIVE MEDIUM SHRUBS	6	6
-TEN SMALL SHRUBS	12	15
50% LIVING MATERIAL OF LANDSCAPED AREA (10,648 SQ FT)	5,324 SQ FT	TOTAL: 7,488 SQ FT
* AREA OF 6" MOW CURB IN LANDSCAPED AREA IS 85 SQ FT		5,503 SQ FT LAWN
		1,985 SQ FT PLANTS
*AREA ALONG 46TH AVE. HAS 50 FT LAWN OUTSIDE OF PL		
1 TREE/1600 SQ FT OF PARKING AREA AND DRIVES (10,084 SQ FT) 6		6

LANDSCAPE NOTES

1. LANDSCAPE CONTRACTOR SHALL HAVE ALL UTILITIES BLUE STAKED PRIOR TO DIGGING. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT CONTRACTORS EXPENSE WITH NO ADDITIONAL COST TO THE OWNER.
 2. DURING THE BIDDING AND INSTALLATION PROCESS, THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR VERIFYING QUANTITIES OF ALL MATERIALS. IF DISCREPANCIES EXIST, THE PLAN SHALL DICTATE QUANTITIES TO BE USED.
 3. ALL PLANT MATERIAL SHALL BE PLANTED ACCORDING TO INTERNATIONAL SOCIETY OF ARBORICULTURE (ISA) STANDARDS WITH CONSIDERATION TO INDIVIDUAL SOIL AND SITE CONDITIONS, AND NURSERY CARE AND INSTALLATION INSTRUCTIONS.
 4. SELECTED PLANTS WILL BE ACCORDING TO THE PLANT LEGEND. IF SUBSTITUTIONS ARE NECESSARY, PROPOSED LANDSCAPE CHANGES MUST BE SUBMITTED TO THE LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO LAYING SOD.
- SHOULD THE SITE REQUIRE ADDITIONAL TOPSOIL, REFER TO SOIL TEST WITH MATCHING EXISTING SOIL. IF A MATCHING SOIL IS NOT LOCATABLE, A 6" DEPTH OF SANDY LOAM TOPSOIL, MIXED PRIOR TO SPREADING WITH 2.3% OF QUALITY COMPOST, CAN BE INCORPORATED INTO THE EXISTING SOIL USING THE FOLLOWING DIRECTIONS: SCARIFY TOP 6" OF EXISTING SUBSOIL AND INCORPORATE 3" OF NEW COMPOST ENRICHED TOPSOIL, SPREAD REMAINING TOPSOIL TO REACH FINISHED GRADE.
6. SOD FOR NEW LAWN AREAS SHALL BE A DROUGHT TOLERANT VARIETY. FINE LEVEL ALL AREAS PRIOR TO LAYING SOD.
 7. EDGING, AS INDICATED ON PLAN, IS TO BE INSTALLED BETWEEN ALL LAWN AND PLANTER AREAS. ANY TREES LOCATED IN LAWN MUST HAVE A 4-6 TREE RING OF THE SAME EDGING.
 8. IF REQUIRED BY CITY OR OWNER SPECIFIED, DOW 5 OZ WEED BARRIER FABRIC TO BE INSTALLED IN ALL PLANTER AREAS EXCEPT UNDER ANNUAL PLANTING AREAS AS SHOWN ON PLAN. WEED BARRIER SHALL BE CUT BACK FROM EACH PLANT TO THE DIAMETER OF THE ROOTBALL.
 9. ROCK MULCH (INORGANIC MULCH) TO BE APPLIED AT THE FOLLOWING DEPTHS: 3" IN ALL TREE, SHRUB, AND PERENNIAL PLANTER AREAS, ANNUAL PLANTING AREAS AS SHOWN ON PLAN TO RECEIVE 4" OF SOIL AND MATERIAL (ORGANIC MULCH). NO MULCH SHALL BE PLACED WITHIN 12" OF BASE OF TREE AND 6" WITHIN BASE OF SHRUBS AND PERENNIALS.
 10. A NEW UNDERGROUND, AUTOMATIC IRRIGATION SYSTEM IS TO BE INSTALLED BY CONTRACTOR IN ALL LANDSCAPED AREAS. LAWN AREAS TO RECEIVE AT LEAST 100% HEAD TO HEAD COVERAGE AND PLANTER AREAS TO RECEIVE A FULL DRIP SYSTEM TO EACH TREE AND SHRUB. POINT SOURCE DRIP OR IN-LINE DRIP TRUBING TO BE NON-POTABLE IRRIGATION QUALITY AND NOT USED FOR DRINKING. SEE IRRIGATION PLAN.
 11. UPON REQUEST, A PLANT GUIDE IS AVAILABLE WITH OUR RECOMMENDATIONS REGARDING WEED BARRIER, PLANT CARE AND MAINTENANCE.
 12. NO PLANT MATERIAL, WITH MATURE GROWTH GREATER THAN THREE (3) FEET IN HEIGHT SHALL BE PLANTED WITHIN POTABLE WATER, SANITARY SEWER, OR NON-POTABLE IRRIGATION EASEMENTS. [VOLUME III, SECTION 2.05(A)]
 13. NO SHRUBS SHALL BE PLANTED WITHIN FIVE FEET OR TREES WITHIN TEN FEET OF POTABLE AND NON-POTABLE WATER METERS, FIRE HYDRANTS, SANITARY SEWER MANHOLES, OR POTABLE WATER, SANITARY SEWER, AND NON-POTABLE IRRIGATION MAINS AND SERVICES. [VOLUME III, SECTION 2.05(B)]
 14. SOIL FOR LANDSCAPING SHALL BE AMENDED WITH 4 CU. YDS OF ORGANIC MATERIAL PER 1,000 SQ FT. [CHAPTER 14.08.201 (7)]
 15. AUTOMATIC IRRIGATION SYSTEM SHALL BE EQUIPPED WITH AN AUTOMATIC RAIN DETECTION DEVICE. [CHAPTER 18.4.100.3(B)]

PLANT LEGEND

<u>EVERGREEN TREES</u>	<u>CODE</u>	<u>QTY</u>	<u>BOTANICAL / COMMON NAME</u>	<u>CONT</u>	<u>CAL</u>
	Pg	1	Picea pungens 'Glauca' Colorado Blue Spruce 50" H X 20" W X100 SQ Ft=100	6' MIN.	
<u>DECIDUOUS TREES</u>	<u>CODE</u>	<u>QTY</u>	<u>BOTANICAL / COMMON NAME</u>	<u>CONT</u>	<u>CAL</u>
	Ga	3	Gymnocladus dioica 'Morton' TM Skinny Latte Kentucky Coffeelee 50" H 18" W X50 SQ Ft=150	B & B	2'Cd
	Ms	3	Malus x adstringens 'JefGreen' TM Emerald Soire Flowering Crabapple 15" H X 6" W X25 SQ Ft=75	B & B	1.5'Cd
	Pc'g	5	Pyrus calleryana 'Glen's Farm' TM Chanticleer Pear 40" H X 15" W X25 SQ Ft=125	B & B	2'Cd
<u>DECIDUOUS SHRUBS</u>	<u>CODE</u>	<u>QTY</u>	<u>BOTANICAL / COMMON NAME</u>	<u>CONT</u>	
	Ea'c	7	Euonymus alatus 'Compactus' Compact Burning Bush 8' H X 8" W X25 SQ Ft=175	5 gal	
	Pf'g	32	Patentia hultioosa 'Goldfinger' Goldfinger Bush Cinquefoil 3' H X 4" W X10 SQ Ft=320	5 gal	
<u>EVERGREEN SHRUBS</u>	<u>CODE</u>	<u>QTY</u>	<u>BOTANICAL / COMMON NAME</u>	<u>CONT</u>	
	B'gm	9	Buxus 'Green Mountain' Green Mountain Boxwood 5' H X 3" W X10 SQ Ft=90	5 gal	
	Jc'd	30	Juniperus chinensis 'Daub's Frosted' Daub's Frosted Juniper 15" H X 5" W X25 SQ Ft=750	5 gal	
<u>GRASSES</u>	<u>CODE</u>	<u>QTY</u>	<u>BOTANICAL / COMMON NAME</u>	<u>CONT</u>	
	Ca'k	40	Calamagrostis x acutiflora 'Karl Foerster' Feather Reed Grass 4' H X 2" W X5 SQ Ft=200	1 gal	

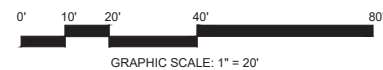
SITE MATERIALS LEGEND

	<u>SYMBOL</u>	<u>1 LANDSCAPE DESCRIPTION</u>	<u>QTY</u>
	<u>1.01</u>	SODDED LAWN AREA LAWN AREAS SHALL BE SOD, NEW TURF AREAS TO BE SODDED WITH 18% "BLUESTAR KENTUCKY BLUEGRASS, 17% "MARQUIS" KENTUCKY BLUEGRASS, 17% "NEWPORT" KENTUCKY BLUEGRASS, 17% "TOUCH-ODOWN" KENTUCKY BLUEGRASS, 16% "APC PERENNIAL RYEGRASS, 13% "ACCENT PERENNIAL RYEGRASS OR APPROVED EQUAL AT A RATE OF 220 LBS. PER ACRE. FINE LEVEL ALL AREAS PRIOR TO LAYING SOD. ALL LAWN AREAS SHALL BE IRRIGATED WITH 100% COVERAGE BY POP-UP SPRAY HEADS AND GEAR-DRIVEN ROTORS. ALL DECIDUOUS AND CONIFER TREES PLANTED WITHIN SOD AREAS SHALL HAVE A FOUR FOOT(4') DIAMETER TREE RING COVERED WITH CHOCOLATE BROWN BARK MULCH, NO SHREDED FINES. SUBMIT SAMPLES TO BE APPROVED BY LANDSCAPE ARCHITECT AND OWNER BEFORE INSTALLATION.	5,503 sf
	<u>1.03</u>	1.5" TAN STONE MULCH PLANTING AREAS TO RECEIVE MIN. 12" DEPTH OF QUALITY TOPSOIL. IF TOPSOIL IS PRESENT ON SITE, PROVIDE SOIL TEST TO DETERMINE SOIL QUALITY FOR PROPOSED PLANTINGS. PROVIDE 3" DEPTH OF STONE MULCH TOP DRESSING.	5,083 sf
	<u>1.04</u>	6" CONCRETE MOW CURB	190 lf
	<u>SYMBOL</u>	<u>1 LANDSCAPE DESCRIPTION</u>	<u>QTY</u>
	<u>1.07</u>	BUILDERS - 3' - 4" SIZE APPROX. 2 TONS	18



APPROVAL CERTIFICATE

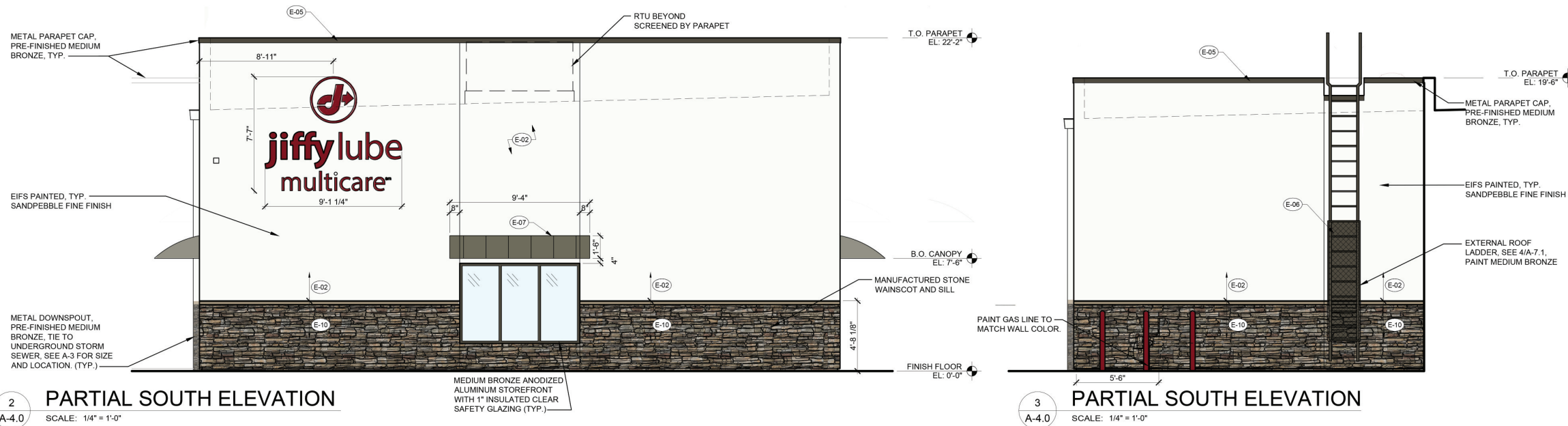
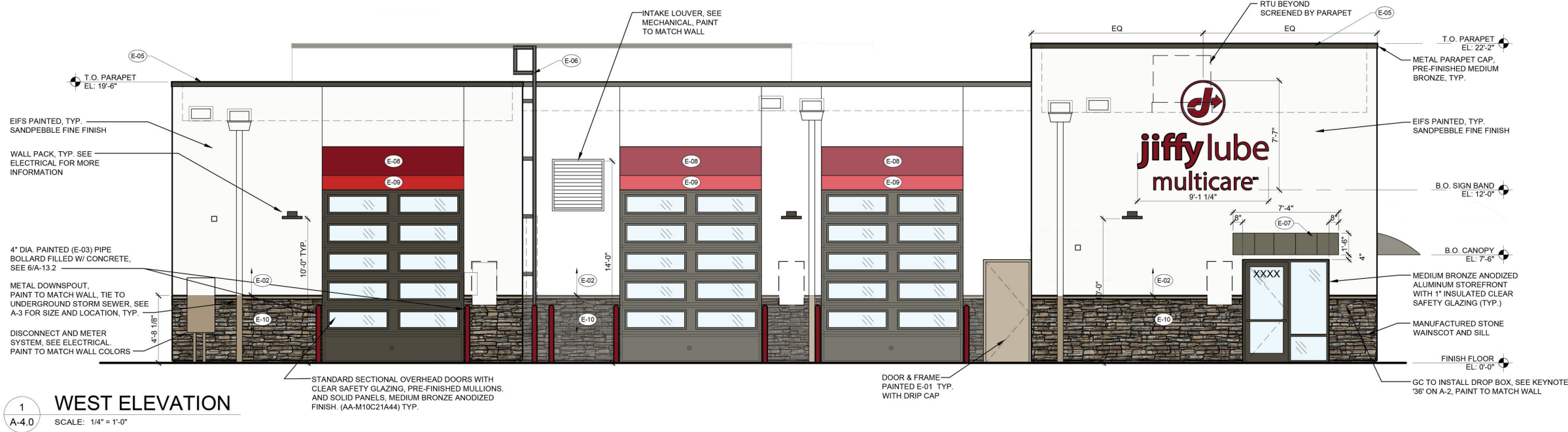
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PLANNING	_____ INITIALS/ DATE
OWNER	_____ INITIALS/ DATE



Item No. 23.

COMBINED PRELIMINARY AND FINAL PUD
SUFFOLK SUBDIVISION FOURTH FILING PUD, 1ST AMENDMENT

A PORTION OF LOT 2A, SUFFOLK SUBDIVISION FOURTH FILING
LOCATED IN THE SW 1/4, SECTION 14, T. 5 N., R. 66 W., 6TH P.M.
CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO



MARK	EXTERIOR FINISH SCHEDULE:	MATERIAL	FINISH	MFR #	COLOR
E01	SIGN POLES / FENCES / EXT. DOORS AND TRIM	ALUMINUM	PAINT (SATIN / SEMI-GLOSS)	SW2827	COLONIAL REVIVAL STONE
E02	EXT. WALLS ABOVE WAINSCOT	EIFS	PAINT (SEMI-GLOSS)	SW7005	PURE WHITE
E03	EXT. WALLS: REAR FASCIA / HANDRAILS / GUARD RAILS / TRAFFIC BOLLARDS	STEEL	PAINT (SEMI-GLOSS)	SW2905	CARMINE
E04	EXT. WALLS: APPLY OVER CARMINE COLOR ABOVE	PAINT	PAINT (SEMI-GLOSS)	CLEAR COAT	SHER-CLEAR
E05	CAP FLASHING	ALUMINUM	PRE-FINISHED ALUMINUM	A-05	MEDIUM BRONZE
E06	EXTERIOR ROOF LADDER	STEEL	PAINT (SEMI-GLOSS)	SW7055	ENDURING BRONZE
E07	CANOPY	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	MEDIUM BRONZE METALLIC
E08	ACM FASCIA PANEL	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	DARK RED
E09	ACM FASCIA PANEL	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	POPPY RED
E10	EXT. WALLS: WAINSCOT / SILL	MANUFACTURED STONE	STONE	BORAL	SOUTHERN LEDGESTONE/ BUCKS COUNTY

GENERAL NOTE:
1. ALL COLOR NAMES INDICATED ARE FOR SELECTION PURPOSES ONLY. SEE PAINT SPECS FOR SPECIFIC REQUIREMENTS. DESCRIPTION: (ALL "SHERWIN / WILLIAMS" NUMBERS "SW" COLORS)
2. APPLY CLEAR COAT (E-04) OVER CARMINE (E-03) ON EXTERIOR APPLICATIONS.
3. ALL SIGNAGE SHOWN IS FOR ILLUSTRATION PURPOSES ONLY. ALL SIGNAGE IS UNDER SEPARATE PERMIT AND FINAL DESIGN IS BY SIGNAGE VENDOR.
4. ALL SECURITY CAMERA LOCATIONS ARE FOR ILLUSTRATION PURPOSES ONLY. ALL FINAL LOCATIONS TO BE COORDINATED WITH SECURITY VENDOR.
5. IF PRE-FINISHED DOWNSPOUTS ARE NOT AVAILABLE THEN PAINT GRADE MUST BE PROVIDED AND PAINTED TO MATCH MEDIUM BRONZE.

APPROVAL CERTIFICATE

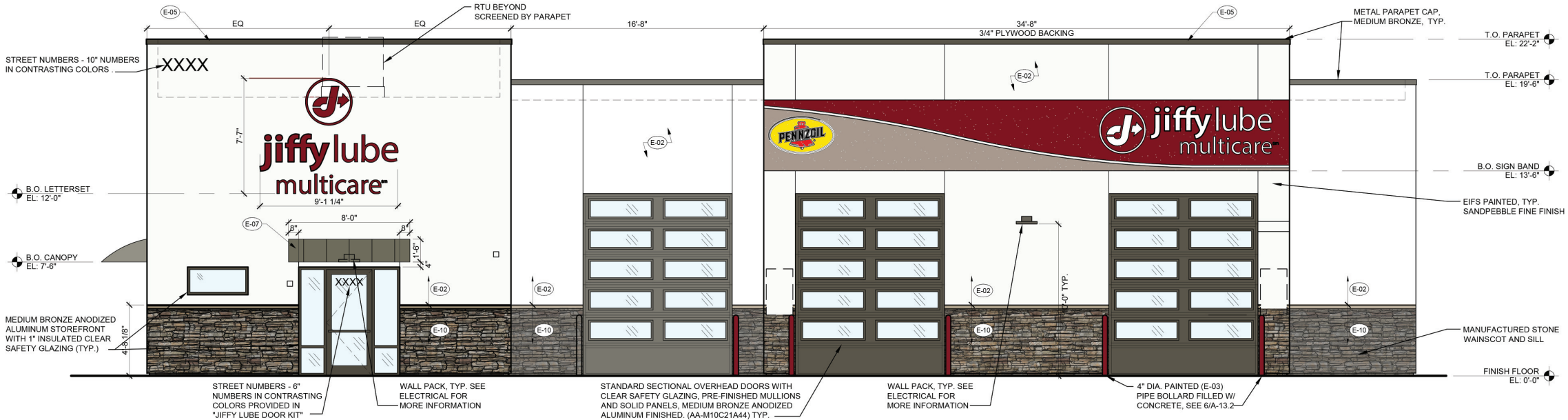
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PLANNING INITIALS/ DATE
OWNER INITIALS/ DATE

EXTERIOR ELEVATIONS
JIFFY LUBE - 46TH & CENTERPLACE
DATE: MAY 7, 2021
SHEET 7 OF 12

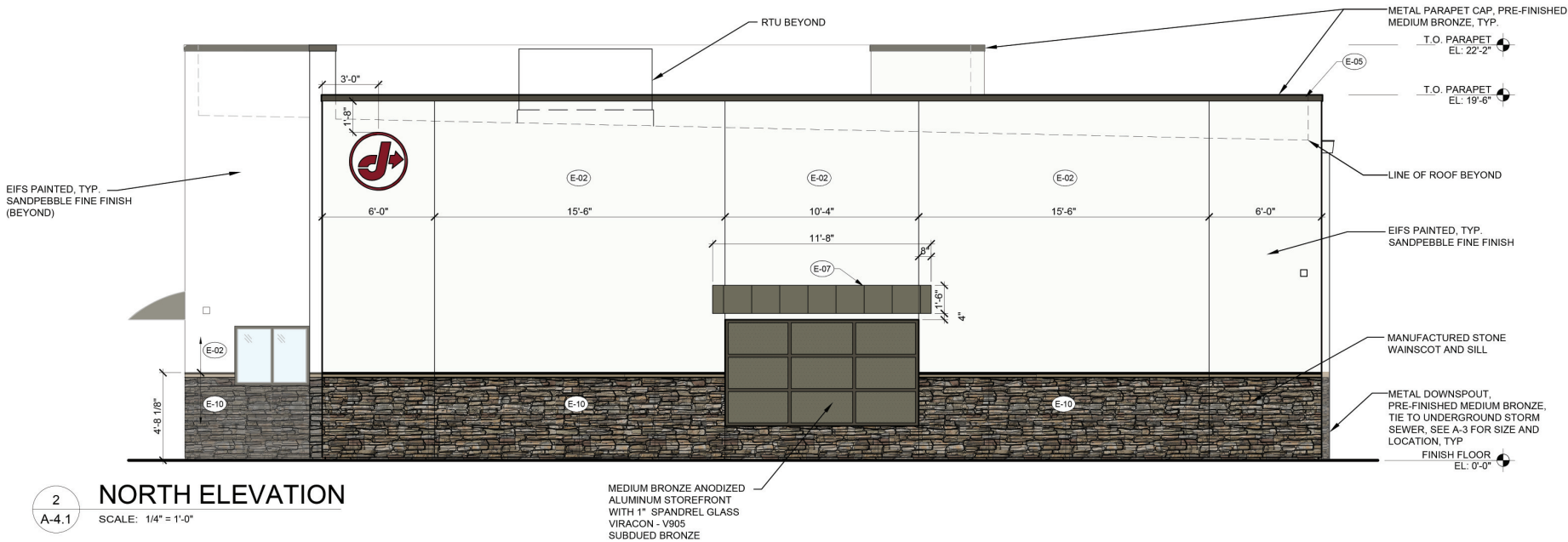
sevan
DESIGN SOLUTIONS, P.C.

COMBINED PRELIMINARY AND FINAL PUD
SUFFOLK SUBDIVISION FOURTH FILING PUD, 1ST AMENDMENT

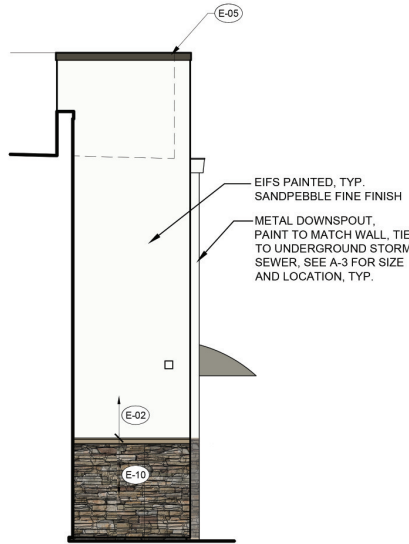
A PORTION OF LOT 2A, SUFFOLK SUBDIVISION FOURTH FILING
LOCATED IN THE SW 1/4, SECTION 14, T. 5 N., R. 66 W., 6TH P.M.
CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO



1
A-4.1 EAST ELEVATION
SCALE: 1/4" = 1'-0"



2
A-4.1 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



3
A-4.1 PARTIAL WEST ELEVATION
SCALE: 1/4" = 1'-0"

MARK	EXTERIOR FINISH SCHEDULE:	MATERIAL	FINISH	MFR #	COLOR
E01	SIGN POLES / FENCES / EXT. DOORS AND TRIM	ALUMINUM	PAINT (SATIN / SEMI-GLOSS)	SW2827	COLONIAL REVIVAL STONE
E02	EXT. WALLS ABOVE WAINSCOT	EIFS	PAINT (SEMI-GLOSS)	SW7005	PURE WHITE
E03	EXT. WALLS: REAR FASCIA / HANDRAILS / GUARD RAILS / TRAFFIC BOLLARDS	STEEL	PAINT (SEMI-GLOSS)	SW2905	CARMINE
E04	EXT. WALLS: APPLY OVER CARMINE COLOR ABOVE	PAINT	PAINT (SEMI-GLOSS)	CLEAR COAT	SHER-CLEAR
E05	CAP FLASHING	ALUMINUM	PRE-FINISHED ALUMINUM	A-05	MEDIUM BRONZE
E06	EXTERIOR ROOF LADDER	STEEL	PAINT (SEMI-GLOSS)	SW7055	ENDURING BRONZE
E07	CANOPY	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	MEDIUM BRONZE METALLIC
E08	ACM FASCIA PANEL	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	DARK RED
E09	ACM FASCIA PANEL	ALUMINUM	PRE-FINISHED ALUMINUM	ALPOLIC	POPPY RED
E10	EXT. WALLS: WAINSCOT / SILL	MANUFACTURED STONE	STONE	BORAL	SOUTHERN LEDGESTONE - BUCKS COUNTY

GENERAL NOTE:

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2. APPLY CLEAR COAT (E-04) OVER CARMINE (E-03) ON EXTERIOR APPLICATIONS.

3. ALL SIGNAGE SHOWN IS FOR ILLUSTRATION PURPOSES ONLY. ALL SIGNAGE IS UNDER SEPARATE PERMIT AND FINAL DESIGN IS BY SIGNAGE VENDOR.

4. ALL SECURITY CAMERA LOCATIONS ARE FOR ILLUSTRATION PURPOSES ONLY. ALL FINAL LOCATIONS TO BE COORDINATED WITH SECURITY VENDOR.

5. IF PRE-FINISHED DOWNSPOUTS ARE NOT AVAILABLE THEN PAINT GRADE MUST BE PROVIDED AND PAINTED TO MATCH MEDIUM BRONZE.

APPROVAL CERTIFICATE

ENGINEERING INITIALS/ DATE
PLANNING INITIALS/ DATE
OWNER INITIALS/ DATE

EXTERIOR ELEVATIONS
JIFFY LUBE - 46TH & CENTERPLACE
DATE: MAY 7, 2021
SHEET 8 OF 12

sevan
DESIGN SOLUTIONS, P.C.

SUFFOLK SUBDIVISION FOURTH FILING, 1ST REPLAT

LOCATED IN THE SW 1/4, SECTION 14, T. 5 N., R. 66 W., 6TH P.M.
CITY OF GREELEY, COUNTY OF WELD, STATE OF COLORADO

DEDICATION

GOLDLINE HOTELS LLC, BEING THE SOLE OWNER(S) IN FEE OF

LOT 2A, SUFFOLK SUBDIVISION FOURTH FILING AS PLATTED IN THE RECORDS OF WELD COUNTY, COLORADO AT RECEPTION NUMBER 3905145, LOCATED IN THE SW 1/4 OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPLE MERIDIAN.

SAID PARCEL, AS DESCRIBED, CONTAINS AN AREA OF 93,888 SQUARE FEET OR 2.155 ACRES, MORE OR LESS.

SHOWN ON THE ATTACHED MAP AS EMBRACED WITHIN THE HEAVY EXTERIOR LINES THEREON, HAS SUBDIVIDED THE SAME INTO LOTS AND BLOCKS AS SHOWN ON THE ATTACHED MAP; AND DO HEREBY SET ASIDE SAID PORTION OR TRACT OF LAND AND DESIGNATE THE SAME SUFFOLK SUBDIVISION FOURTH FILING, 1ST REPLAT (A SUBDIVISION); AND DO DEDICATE TO THE PUBLIC, THE STREETS AND ALL EASEMENTS OVER AND ACROSS SAID LOTS AT LOCATIONS SHOWN ON SAID MAP; AND DO FURTHER CERTIFY THAT THE WIDTH OF SAID STREETS, DIMENSIONS OF THE LOTS AND BLOCKS AND THE NAMES AND NUMBERS THEREOF ARE CORRECTLY DESIGNATED UPON SAID MAP.

SIGNATURE OF OWNERS

WITNESS MY HAND AND SEAL THIS _____ DAY OF _____, A.D. _____

STATE OF COLORADO
CITY OF GREELEY
WELD COUNTY

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____.

MY COMMISSION EXPIRES: _____

WITNESS MY HAND AND OFFICIAL SEAL.

STANDARD NOTES

A. STREET MAINTENANCE. IT IS MUTUALLY UNDERSTOOD AND AGREED THAT THE DEDICATED ROADWAYS SHOWN ON THIS PLAT WILL NOT BE MAINTAINED BY THE CITY UNTIL AND UNLESS THE STREETS ARE CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS IN EFFECT AT THE DATE CONSTRUCTION PLANS ARE APPROVED, AND PROVIDED THAT CONSTRUCTION OF SAID ROADWAY(S) IS STARTED WITHIN ONE (1) YEAR OF THE CONSTRUCTION PLAN APPROVAL. THE OWNER(S), DEVELOPER(S) AND/OR SUBDIVIDERS, THEIR SUCCESSORS AND/OR ASSIGNS IN INTEREST, SHALL BE RESPONSIBLE FOR STREET MAINTENANCE UNTIL SUCH TIME AS THE CITY ACCEPTS THE RESPONSIBILITY FOR MAINTENANCE AS STATED ABOVE.

B. DRIVES, PARKING AREAS AND UTILITY EASEMENTS MAINTENANCE. THE OWNERS OF THIS SUBDIVISION, THEIR SUCCESSORS AND/OR ASSIGNS IN INTEREST, THE ADJACENT PROPERTY OWNER(S), HOMEOWNERS' ASSOCIATION OR OTHER ENTITY OTHER THAN THE CITY IS RESPONSIBLE FOR MAINTENANCE AND UPKEEP OF ANY AND ALL DRIVES, PARKING AREAS AND EASEMENTS (CROSS-ACCESS EASEMENTS, DRAINAGE EASEMENTS, ETC.)

C. DRAINAGE MAINTENANCE. THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL DRAINAGE FACILITIES INSTALLED PURSUANT TO THE DEVELOPMENT AGREEMENT. REQUIREMENTS INCLUDE, BUT ARE NOT LIMITED TO, MAINTAINING THE SPECIFIED STORM WATER DETENTION/ RETENTION VOLUMES, MAINTAINING OUTLET STRUCTURES, FLOW RESTRICTION DEVICES AND FACILITIES NEEDED TO CONVEY FLOW TO SAID BASINS. THE CITY SHALL HAVE THE RIGHT TO ENTER PROPERTIES TO INSPECT SAID FACILITIES AT ANY TIME. IF THESE FACILITIES ARE NOT PROPERLY MAINTAINED, THE CITY SHALL NOTIFY THE PROPERTY OWNER IN WRITING AND SHALL INFORM THE OWNER THAT CORRECTIVE ACTION BY THE OWNER SHALL BE REQUIRED WITHIN TEN (10) WORKING DAYS OF RECEIPT OF NOTIFICATION BY THE CITY, UNLESS AN EMERGENCY EXISTS, IN WHICH CASE CORRECTIVE ACTION SHALL BE TAKEN IMMEDIATELY UPON RECEIPT OF NOTIFICATION BY THE CITY. IF THE OWNER FAILS TO TAKE CORRECTIVE ACTION WITHIN TEN (10) WORKING DAYS, THE CITY MAY PROVIDE THE NECESSARY MAINTENANCE AND ASSESS THE MAINTENANCE COST TO THE OWNER OF THE PROPERTY.

D. DRAINAGE LIABILITY. THE CITY DOES NOT ASSUME ANY LIABILITY FOR DRAINAGE FACILITIES IMPROPERLY DESIGNED OR CONSTRUCTED. THE CITY REVIEWS DRAINAGE PLANS BUT CANNOT, ON BEHALF OF ANY APPLICANT, OWNER OR DEVELOPER, GUARANTEE THAT FINAL DRAINAGE DESIGN REVIEW AND APPROVAL BY THE CITY WILL RELIEVE SAID PERSON, HIS SUCCESSORS AND ASSIGNS, FROM LIABILITY DUE TO IMPROPER DESIGN. CITY APPROVAL OF A FINAL PLAT DOES NOT IMPLY APPROVAL OF THE DRAINAGE DESIGN WITHIN THAT PLAT.

E. LANDSCAPE MAINTENANCE. THE OWNERS OF THIS SUBDIVISION, THEIR SUCCESSORS AND/OR ASSIGNS IN INTEREST, THE ADJACENT PROPERTY OWNER(S), HOMEOWNERS' ASSOCIATION OR ENTITY OTHER THAN THE CITY IS RESPONSIBLE FOR MAINTENANCE AND UPKEEP OF PERIMETER FENCING OR WALLS, LANDSCAPING AND LANDSCAPED AREAS AND SIDEWALKS BETWEEN THE ADJACENT ROADWAYS. THE OWNERS OF THIS SUBDIVISION, THEIR SUCCESSORS AND/OR ASSIGNS IN INTEREST OR AN ENTITY OTHER THAN THE CITY, AGREE TO THE RESPONSIBILITY OF MAINTAINING ALL OTHER OPEN SPACE AREAS ASSOCIATED WITH THIS DEVELOPMENT.

F. SIGHT DISTANCE. THE CLEAR VISION ZONE OF A CORNER LOT, AS DETERMINED BY SECTION 18.44.090(B)(1) OF THE DEVELOPMENT CODE, SHALL BE FREE FROM SHRUBS, GROUND COVERS, BERMS, FENCES, SIGNS, STRUCTURES, PARKED VEHICLES OR OTHER MATERIALS OR ITEMS GREATER THAN THIRTY-SIX (36) INCHES IN HEIGHT FROM THE STREET LEVEL.

G. PUBLIC SAFETY. ACCESS, WHETHER FOR EMERGENCY OR NONEMERGENCY PURPOSES, IS GRANTED OVER AND ACROSS ALL ACCESS WAYS FOR POLICE, FIRE AND EMERGENCY VEHICLES. IF ANY OR ALL OF THE ACCESS WAYS IN THIS SUBDIVISION ARE PRIVATE, THE HOMEOWNERS' ASSOCIATION WILL BE RESPONSIBLE FOR ENSURING THAT SUCH ACCESS WAYS ARE PASSABLE, AT ALL TIMES, FOR POLICE, FIRE AND EMERGENCY VEHICLES.

H. DRAINAGE MASTER PLAN. THE POLICY OF THE CITY REQUIRES THAT ALL NEW DEVELOPMENT AND REDEVELOPMENT SHALL PARTICIPATE IN THE REQUIRED DRAINAGE IMPROVEMENTS AS SET FORTH BELOW:

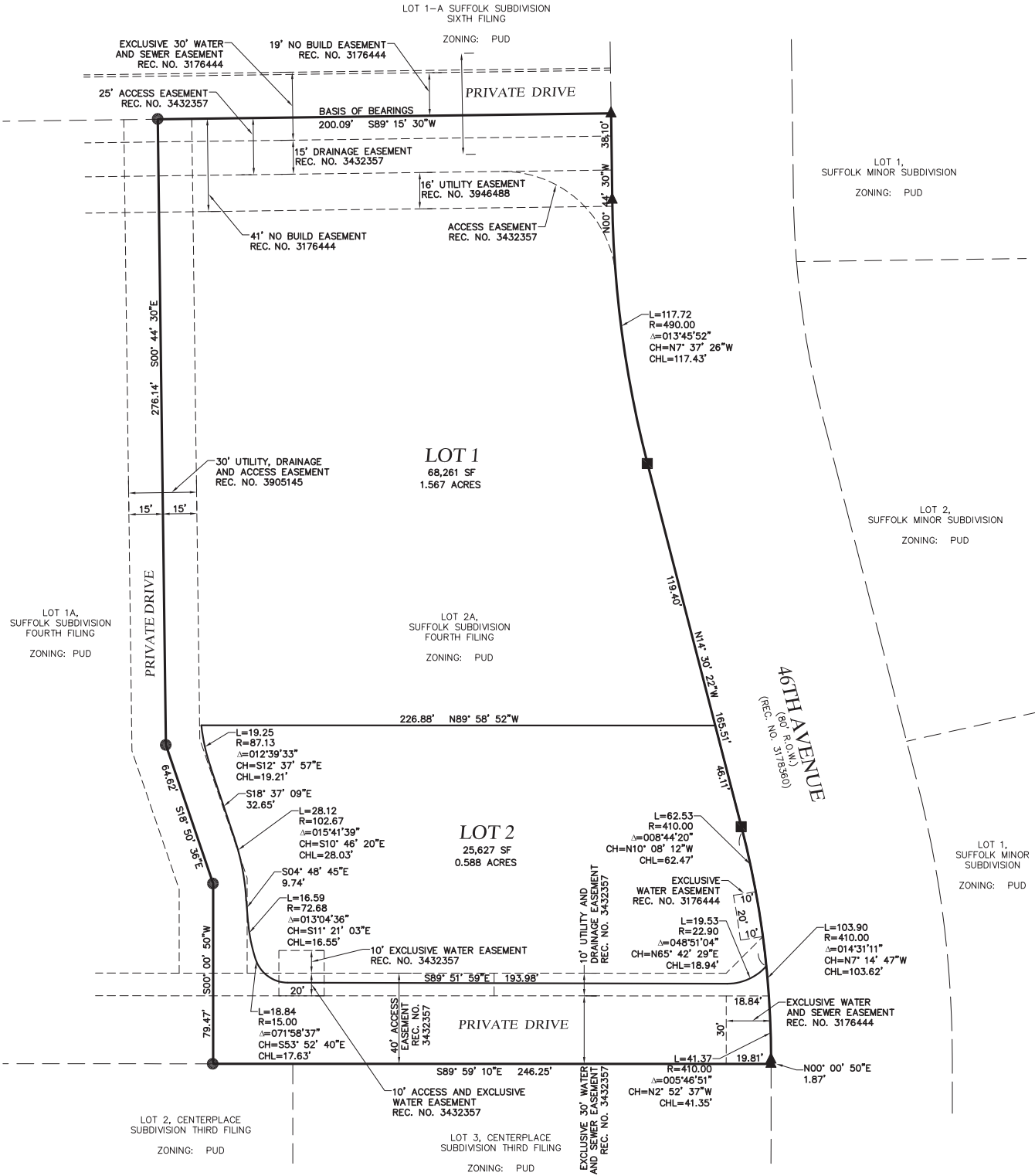
- 1) DESIGN AND CONSTRUCT THE LOCAL DRAINAGE SYSTEM AS DEFINED BY THE FINAL DRAINAGE REPORT AND PLAN AND THE STORM WATER MANAGEMENT PLAT.
- 2) DESIGN AND CONSTRUCT THE CONNECTION OF THE SUBDIVISION DRAINAGE SYSTEM TO A DRAINAGE WAY OF ESTABLISHED CONVEYANCE CAPACITY, SUCH AS A MASTER PLANNED OUTFALL STORM SEWER OR MASTER PLANNED MAJOR DRAINAGE WAY. THE CITY WILL REQUIRE THAT THE CONNECTION OF THE MINOR AND MAJOR SYSTEMS PROVIDE CAPACITY TO CONVEY ONLY THOSE FLOWS (INCLUDING OFFSITE FLOWS) LEAVING THE SPECIFIC DEVELOPMENT SITE. TO MINIMIZE OVERALL CAPITAL COSTS, THE CITY ENCOURAGES ADJACENT DEVELOPMENTS TO JOIN IN DESIGNING AND CONSTRUCTING CONNECTION SYSTEMS. ALSO, THE CITY MAY CHOOSE TO PARTICIPATE WITH A DEVELOPER IN THE DESIGN AND CONSTRUCTION OF THE CONNECTION SYSTEM.
- 3) EQUITABLE PARTICIPATION IN THE DESIGN AND CONSTRUCTION OF THE MAJOR DRAINAGE WAY SYSTEM THAT SERVES THE DEVELOPMENT AS DEFINED BY ADOPTED MASTER DRAINAGE WAY PLANS OR AS REQUIRED BY THE CITY AND DESIGNED IN THE FINAL DRAINAGE REPORT AND THE STORM WATER MANAGEMENT PLAN.

I. MAINTENANCE EASEMENTS. A MAINTENANCE EASEMENT IS REQUIRED FOR DEVELOPMENTS WITH ZERO SIDE SETBACKS, IF ONE (1) STRUCTURE IS BUILT ON THE LOT LINE. IN ORDER TO MAINTAIN THE STRUCTURE WITH THE ZERO SIDE SETBACK, A MAINTENANCE EASEMENT MAY BE REQUIRED ON THE ADJACENT LOT TO ENABLE MAINTENANCE TO BE PERFORMED ON SAID STRUCTURE FROM THE ADJOINING PROPERTY. EACH LOT OWNER AGREES TO ALLOW ADJACENT LOT OWNERS ACCESS ACROSS THEIR LOT, WITHIN FIVE (5) FEET OF THE COMMON LOT LINE, AS MAY BE NEEDED TO MAINTAIN AND REPAIR THE ADJACENT OWNER'S PRINCIPAL STRUCTURE. EACH ADJACENT OWNER AGREES TO REPAIR ANY DAMAGE WHICH MAY BE CAUSED TO THE LOT OWNER'S PROPERTY FROM THE ADJACENT OWNER'S USE OF THIS MAINTENANCE EASEMENT AND TO TAKE ALL NECESSARY STEPS TO AVOID CAUSING SUCH DAMAGE.

J. STREET LIGHTING. ALL LOTS ARE SUBJECT TO AND BOUND BY TARIFFS WHICH ARE NOW AND MAY IN THE FUTURE BE FILED WITH THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO RELATING TO STREET LIGHTING IN THIS SUBDIVISION, TOGETHER WITH RATES, RULES AND REGULATIONS THEREIN PROVIDED AND SUBJECT TO ALL FUTURE AMENDMENTS AND CHANGES THERETO. THE OWNERS OR THEIR SUCCESSORS AND/OR ASSIGNS IN INTEREST, SHALL PAY, AS BILLED, A PORTION OF THE COST OF PUBLIC STREET LIGHTING IN THE SUBDIVISION IN ACCORDANCE TO APPLICABLE RATES, RULES AND REGULATIONS, INCLUDING FUTURE AMENDMENTS AND CHANGES ON FILE WITH THE PUBLIC UTILITIES COMMISSION.

K. WATER OR SEWER MAIN EASEMENTS. THERE SHALL BE NO PERMANENT STRUCTURES, FENCES, DETENTION PONDS, LANDSCAPING (PLANTINGS OR BERMS) GREATER THAN THREE (3) FEET TALL MATURE GROWTH, OR OTHER ENCUMBRANCES LOCATED IN WATER OR SEWER MAIN EASEMENTS.

L. WATER OR SEWER MAINS IN PRIVATE ROADS OR EASEMENTS. FOR PUBLIC WATER AND SEWER MAINS LOCATED IN PRIVATE ROADS OR EASEMENTS, FUTURE REPAIR OF PAVING OR OTHER IMPROVED SURFACES SUBSEQUENT TO THE REPAIR OF A WATER OR SEWER MAIN SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS' OR CONDOMINIUM ASSOCIATION. THE WATER AND SEWER DEPARTMENT WILL SAFELY BACKFILL THE TRENCH TO THE SURFACE, BUT NOT REBUILD ANY SURFACE IMPROVEMENTS.



WATER AND SANITARY SEWER NOTES

THERE SHALL BE NO DETENTION PONDS, BERMS GREATER THAN THREE FEET (3'), PERMANENT STRUCTURES, FENCES, TREES, SHRUBS WITH A MATURE HEIGHT GREATER THAN THREE FEET (3'), OR OTHER OBSTRUCTIONS THAT WILL IMPEDE THE ABILITY OF THE CITY TO ADEQUATELY MAINTAIN AND SERVICE THE WATER AND/OR SANITARY SEWER LINES LOCATED IN EASEMENTS THAT CONTAIN WATER AND/OR SANITARY SEWER LINES.

FOR PUBLIC WATER AND SEWER LINES LOCATED IN PRIVATE ROADS OR EASEMENTS, FUTURE REPAIR OF PAVING, LANDSCAPING, OR OTHER IMPROVED SURFACES SUBSEQUENT TO THE REPAIR OF A WATER OR SEWER LINE SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER/HOME OWNER'S ASSOCIATION. THE CITY OF GREELEY'S WATER AND SEWER DEPARTMENT WILL BACKFILL THE TRENCH TO THE SURFACE BUT NOT REBUILD ANY SURFACE IMPROVEMENTS OR REPLACE LANDSCAPING.

FOR ALL REPLATS WHERE LOT LINES OR STREET LOCATIONS CHANGE, ALL EXISTING WATER AND SEWER STUB-OUTS, FIRE HYDRANTS, ETC. SHALL BE RELOCATED TO THEIR APPROPRIATE LOCATION. WATER MAIN AND SANITARY SEWER COLLECTION DESIGNS IN THIS REPLATED AREA MUST CONFORM TO CURRENT CITY OF GREELEY DESIGN CRITERIA.

THE WATER AND SEWER DEPARTMENT SHALL HAVE THE EXCLUSIVE USE OF EXCLUSIVE WATER AND/OR WATER AND SANITARY SEWER EASEMENTS EXCEPT FOR ANGLED UTILITY CROSSINGS. THE WATER AND SEWER DEPARTMENT SHALL REVIEW FOR ACCEPTANCE ALL UTILITY CROSSING METHODS PRIOR TO CONSTRUCTION.

LEGEND

- PLAT BOUNDARY
- EXISTING RIGHT-OF-WAY
- EXISTING LOT LINE
- EXISTING EASEMENT
- 1/2" REBAR & CAP - PLS 33642
- NAIL & BRASS TAG - PLS 33642
- NAIL & BRASS TAG - PLS 38348

OWNER/SUBDIVIDER

GOLDLINE HOTELS LLC
27755 E. MORaine DRIVE
AURORA, COLORADO 80016

ENGINEER/SURVEYOR

VERMILION PEAK ENGINEERING
1745 SHEA CENTER DRIVE, 4TH FL
HIGHLANDS RANCH, CO 80129
720-402-6070
CONTACT: BRIAN KROMBEIN, PE, PLS

MINOR PLAT
JIFFY LUBE GREELEY
JOB NO. 20012

DATE: OCTOBER 2, 2020
REVISION: JANUARY 15, 2021
REVISION: APRIL 5, 2021
REVISION: MAY 7, 2021
SHEET 1 OF 1



CERTIFICATE OF APPROVAL OF THE ENGINEERING DEVELOPMENT REVIEW AND CIVIL INSPECTIONS MANAGER

APPROVED THIS _____ DAY OF _____, 20____, BY THE ENGINEERING DEVELOPMENT REVIEW AND CIVIL INSPECTIONS MANAGER OF THE CITY OF GREELEY, COLORADO.

ENGINEERING DEVELOPMENT REVIEW AND CIVIL INSPECTIONS MANAGER

CERTIFICATE OF APPROVAL OF THE COMMUNITY DEVELOPMENT DIRECTOR

APPROVED THIS _____ DAY OF _____, 20____, BY THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF GREELEY, COLORADO.

COMMUNITY DEVELOPMENT DIRECTOR

SURVEYOR'S CERTIFICATE:

THAT I, BRIAN KROMBEIN, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THIS LAND, INCLUDING ALL EXISTING RIGHT-OF-WAY EASEMENTS, AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY SUPERVISION, IN ACCORDANCE WITH THE REGULATIONS OF THE STATE OF COLORADO.

BRIAN KROMBEIN, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38344
FOR AND ON BEHALF OF VERMILION PEAK ENGINEERING LLC

DATE



GENERAL NOTES

1. ACCORDING TO TO FEMA FLOOD INSURANCE RATE MAP 08123C1519E, DATED JANUARY 20, 2016, THIS PROPERTY LIES WITHIN ZONE X, WHICH IS DEFINED AS, "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN".
2. BASIS OF BEARINGS: THE NORTH LINE OF THE ABOVE DESCRIBED PARCEL, BEING MONUMENTED AS SHOWN HEREON, BEARS N89°15'30"E PER PLAT OF SUFFOLK SUBDIVISION FOURTH FILING. ALL OTHER BEARINGS ARE RELATIVE THERETO. MONUMENTS EXIST AS SHOWN HEREON.
3. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY AND TITLE OF RECORD, VERMILION PEAK ENGINEERING REUE UPON TITLE COMMITMENT NO. NCS-1014522-HOU1 PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY WITH AN EFFECTIVE DATE OF MAY 29, 2020 AT 5:00 P.M.
4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS, OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.
5. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREIN.
6. NO BUILD RESTRICTION APPLIES ONLY TO ABOVE-GROUND BUILDINGS AND STRUCTURES, BUT NOT TO PAVEMENT, SIDEWALKS, LANDSCAPING OR UNDERGROUND IMPROVEMENTS.
7. RAW WATER DEDICATION FOR THE PROPERTIES IS AS FOLLOWS:
LOT 1 = 11.68 ACRE-FEET
LOT 2 = 4.32 ACRE-FEET

From: [David Amin](#)
To: [Kira Stoller](#)
Subject: [EXTERNAL] Jiffy Lube
Date: Friday, May 28, 2021 4:46:05 PM

Hello Kira,

I know the hearing has happened.

I was travelling so could not attend.

My only concern is the tiny parcel bound on three sides by roads.

It makes no sense to split this land and carve up access points etc.

As is things are very tight in Center place in this specific area.

David Amin 303 358 2681
Lodging Associates Inc. (Homewood Suites Greeley)
“It is not living that matters, but living rightly”

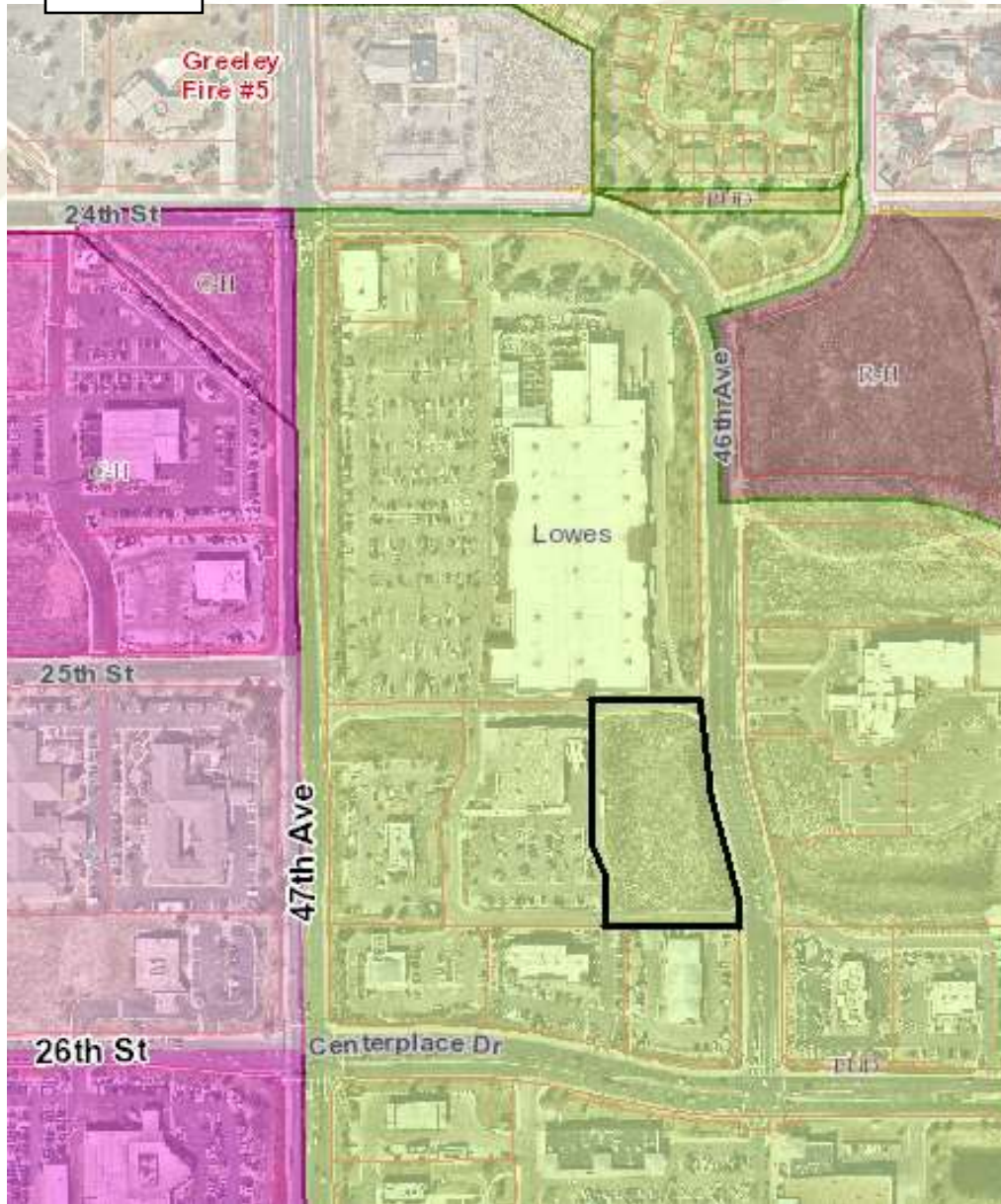
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CAUTION: This email is from an **external** source. Ensure you trust this sender before clicking on any links or attachments.

Suffolk Subdivision 4th Filing, 1st Amendment Combined Preliminary & Final PUD (PUD2020-0013)

City Council
June 15, 2021

Kira Stoller, Planner II



Location

- **West of 46th Avenue between 24th Street & Centerplace Drive**
- **2.16 acre site**
- **Surrounding land uses:**
 - **North: Retail (Lowe's Home Improvement)**
 - **South: Auto repair (Firestone Complete Auto Care)**
 - **East: Restaurant (The G.O.A.T. Sports Bar)**
 - **West: Retail (Goodwill)**

Site Photos



Looking northwest
from 46th Avenue

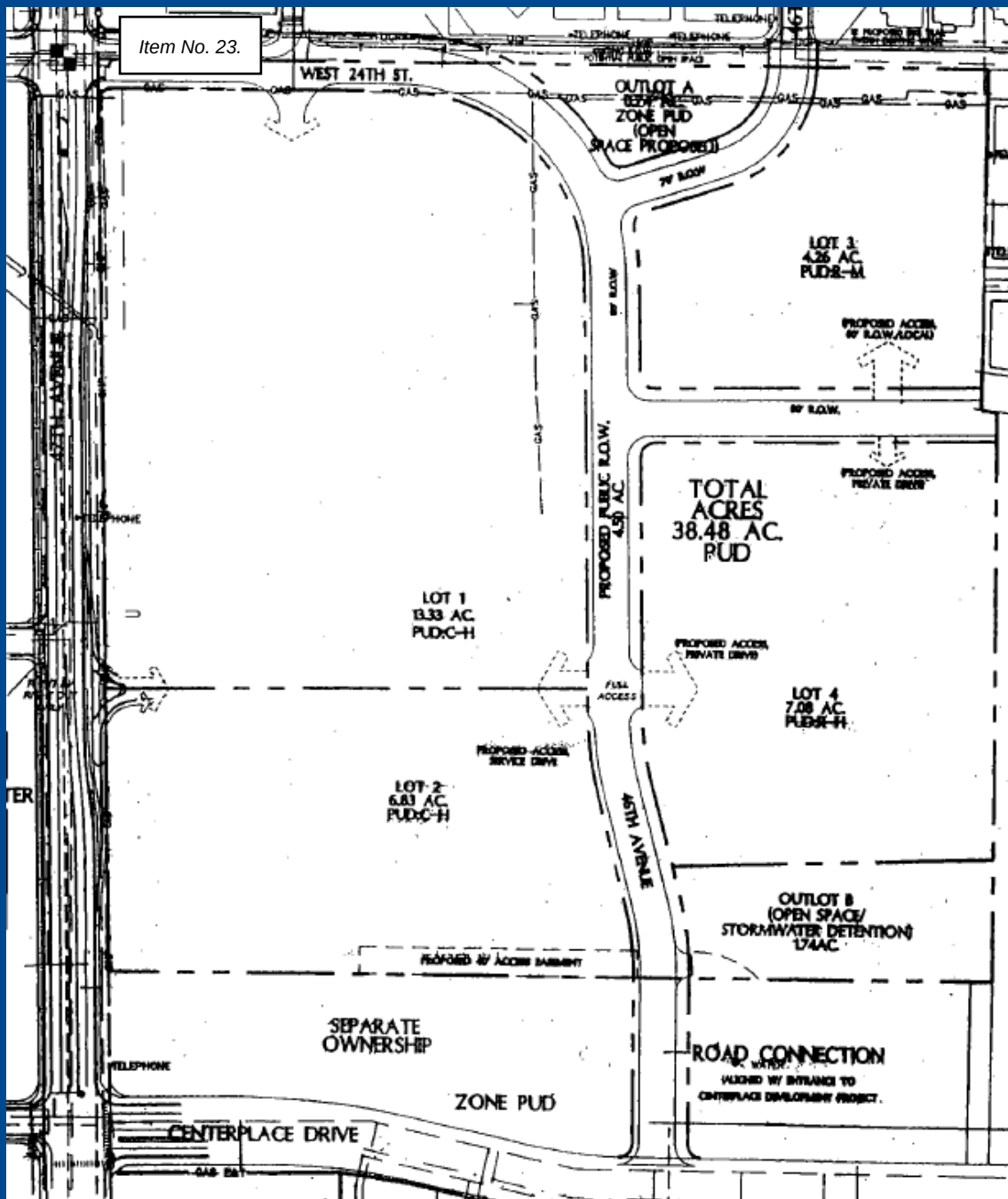
Item No. 23.



Site Photos

Looking east





Background

- **Suffolk Preliminary PUD :**
 - Encompassed 38.48 acres of land & identified 4 lots & 2 outlots
 - Subject site was originally part of Lot 2, which allowed uses permitted in C-H zone district
- **Request:**
 - Replat of the Suffolk Subdivision, 4th Filing
 - Combined Preliminary & Final PUD for a 3,174 square foot auto repair facility

- **Lot 1 - 1.57 acres**
- **Lot 2 - 0.59 acres**
- **Proposed auto repair facility would be situated on newly platted Lot 2**
- **Lot 1 would be developed at a later date & require a separate Preliminary & Final PUD approval (would still allow land uses permitted in C-H zone district)**



Site Data



SCALE: 14" = 1'-0"

Approval Criteria

Preliminary PUD Criteria – Section 24-663

A)	Area of proposed PUD shall be of substantial size to permit its design & development as a cohesive unit & establish it as a meaningful part of community (minimum size of 2 acres).
	<i>Subject site is approximately 2.16 acres in size, however corresponding replat would create smaller lots. Because property is already zoned PUD and allowed uses have been established for both proposed lots, staff feels this still aligns with spirit of the Code.</i>
B)	Consistency with City's Comprehensive Plan?
	<i>Proposal aligns with Comprehensive Plan objectives:</i> • <i>GC-1.2 – Form of Growth</i> • <i>GC-1.3– Adequate Public Facilities</i> • <i>GC-4.3 – Infill Compatibility</i>

Approval Criteria

Section 24-673 Substantial Conformance with Preliminary PUD	
YES	1. Building Elevations
	<i>Similar design as existing structures in area.</i>
YES	2. Landscaping
	<i>Site would contain 42% open space (standard commercial requirement is 20%).</i>
YES	3. Signage
	<i>Sign regulations to comply with C-H zone district.</i>
YES	4. Photometric Plan
	<i>Propose 5 freestanding lights with maximum height of 20'.</i>
YES	5. Parking
	<i>Stall count (9 spaces) meets minimum requirement.</i>

Recommendation

NOTICING

- Notice letters were mailed to 18 property owners within 500 feet of site
- Signs were posted on the site & newspaper notice was published on May 19
- No citizen input received
- Planning Commission unanimously recommended approval at May 25 hearing

MOTION

Based on the project summary and accompanying analysis, the proposed combined Preliminary and Final PUD for an auto repair use, located at 2505 46th Avenue, and a final plat and site plan, for the Suffolk Subdivision 4th Filing, 1st Amendment, is in compliance with the Development Code and is therefore approved.

Council Agenda Summary

Key Staff Contact: Anissa Hollingshead, City Clerk, 970-350-9742

Title:

Appointment of applicants to the Commission on Disabilities, Construction Trades Advisory & Appeals Board, Downtown Development Authority, Historic Preservation Commission, Human Relations Commission, Rodarte Community Center Advisory Board, Water & Sewer Board, and Youth Commission

Summary:

Council appointment is needed to the above-mentioned boards and commissions due to vacancies and term expirations. Staff continues to actively recruit to fill all vacant positions. Interviews for the Water & Sewer Board position were conducted during the June 8th City Council Worksession.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

The City Attorney's Office reviewed the applications and advised of potential conflicts of interest.

It should be noted that there is a possibility that the applicants currently serve as a volunteer on a board or commission besides the one they are applying to. It is also important to point out to the applicants that there are always potential conflicts that exist with business and investments, current jobs or relatives and family members coming before the Board or Commission.

Should such conflicts arise, the Board or Commission member simply excuses themselves from that particular item but such a potential conflict does not preclude anyone from serving on a Board or Commission in general, just that particular agenda item.

Other Issues and Considerations:

Not applicable.

Applicable Council Priority and Goal:

Infrastructure & Growth: Establish the capital and human infrastructure to support and maintain a safe, competitive, appealing and successful community.

Decision Options:

- 1) Appoint or reappoint the individuals to serve on applicable board or commission;
or
- 2) Direct staff to re-advertise applicable vacancy.

Council's Recommended Action:

No motion is necessary. The City Council's Policies and Protocol authorize appointment of Board and Commission members by written ballot, which can be used in lieu of a motion or voice vote for individual or multiple appointments. This policy was adopted by Council as a time-savings measure. Accordingly, a ballot is attached for Council's use in making appointments. Candidates receiving a majority vote (at least 4 votes) are appointed with no further action needed by Council.

Attachments:

Ballot

June 2021 Boards and Commissions Transmittal Summary

City of Greeley
Boards & Commissions
Appointment Ballot
June 15, 2021



Applicants for the boards and/or commissions listed below are in alphabetical order
 and recommendations from the interview team are shown in bold.

***** BALLOT *****

Commission on Disabilities	
<i>2 Positions</i>	
☐	CHRISTOPHER DALGARN (I)
☐	CARL ERICKSON
☐	(Recruit For Additional Applicants)

Human Relations Commission	
<i>1 Position</i>	
☐	KRISSY BHANJI
☐	Kathleen Lennon
☐	(Recruit For Additional Applicants)

Construction Trades Advisory & Appeals Board	
<i>4 Positions</i>	
☐	BRAD SHADE (I)
☐	(RECRUIT FOR ADDITIONAL APPLICANTS)

Rodarte Community Center Advisory Board	
<i>1 Position</i>	
☐	DARREN DUNN
☐	(Recruit For Additional Applicants)

Downtown Development Authority	
<i>2 Positions</i>	
☐	JUSTIN GHOFRANI (I)
☐	MATTHEW HORTT
☐	(Recruit For Additional Applicants)

Water & Sewer Board	
<i>1 Position</i>	
☐	Stacey Kjeldgaard
☐	Cheri Witt-Brown
☐	(Recruit For Additional Applicants)

Historic Preservation Commission	
<i>2 Positions</i>	
☐	Bryan Cooke
☐	Therese Gilbert
☐	Molly McIntosh
☐	JACOB MELISH
☐	(RECRUIT FOR ADDITIONAL APPLICANTS)

Youth Commission	
<i>4 Positions</i>	
☐	NASH BHANJI
☐	(RECRUIT FOR ADDITIONAL APPLICANTS)

Incumbent = (I)

Boards & Commissions Transmittal

June 4, 2021

Key Staff Contact: Jerry Harvey, Assistant City Clerk, 350-9746

Interview Date

June 9, 2021

Council Interview Team

Council Members Clark and Payton

Council Appointment Date

June 15, 2021

Boards and Commissions Being Interviewed

- **Commission on Disabilities**
- **Construction Trades Advisory & Appeals Board**
- **Downtown Development Authority**
- **Historic Preservation Commission**
- **Human Relations Commission**
- **Rodarte Community Center Advisory Board**
- **Water & Sewer Board (Interview will be conducted at June 8th Worksession)**
- **Youth Commission**

Council's Recruitment and Qualifications Policy

General recruitment efforts shall be made with special measures being taken to balance ward representation and attract minority and special population applicants. Generally, volunteers will be limited to serving on one board or commission at a time. (14.2. (c)(2) City Council, Policies and Protocol)

Demographic information of existing board members and any specialty requirements are contained within the attached Membership Rosters.

Legal Issues

The City Attorney's Office reviewed the applications and the attached memorandum addresses any potential conflicts of interest.

It should be noted that there is a possibility that the applicants currently serve as a volunteer on a board or commission besides the one they are applying to. It is also important to point out to the applicants that there are always potential conflicts that exist with business and investments, current jobs or relatives and family members coming before the Board or Commission.

Should such conflicts arise, the Board or Commission member simply excuses themselves from that particular item but such a potential conflict does not preclude anyone from serving on a Board or Commission in general, just that particular agenda item.

Applicable Council Goal or Objective

Infrastructure & Growth – Establish the capital & human infrastructure to support & maintain a safe, competitive, appealing, and dynamic community.

Decision Options

1. Recommend candidates for appointment; or
2. Direct staff to re-advertise applicable vacancy.

Attachments

1. Interview Schedule
2. Conflict Memorandum from City Attorney's Office
3. Sample Ballot
4. Membership Rosters & Input from above mentioned Boards and Commissions
5. Applications of those being considered for interview and/or considered for appointment

Transmittal reviewed by:

DS
RHO

Roy Otto, City Manager

DS
AH

Anissa Hollingshead, City Clerk

June 2021						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July 2021						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jun 13	14	15 6:00pm City Council Meeting - Council Master Calendar	16 2:00pm Water & Sewer Board (Gates)	17 7:30am DDA (Zasada/Butler) 3:30pm Airport Authority (Clark/Payton)	18	19 6:00pm Big Buckle Ball - Council Master Calendar 6:00pm Weld Distinguished Citizen of the Year Honoring Dr. Deirdre Pilch (Hilton DoubleTree at Lincoln Park, 919 7th
20	21	22 6:00pm City Council Worksession Meeting - Council Master Calendar	23	24 7:30am Poudre River Trail (Hall)	25	26
27	28 11:30am Greeley Chamber of Commerce (Hall) 6:00pm Youth Commission (Butler)	29	30 7:00am Upstate Colorado Economic Development (Gates/Hall) (Upstate Colorado Conference Room) - Council Master Calendar	Jul 1 3:30pm IG Adv. Board (Butler) 6:00pm MPO (Gates/Payton)	2	3
4	5	6 6:00pm City Council Meeting - Council Master Calendar	7	8 7:30am Poudre River Trail (Hall)	9	10
11	12	13 6:00pm City Council Worksession Meeting - Council Master Calendar	14	15 7:30am DDA (Zasada/Butler) 3:30pm Airport Authority (Clark/Payton)	16	17

City Council Meeting Scheduling

Current as of 06/11/2021

This schedule is subject to change

Date	Description	Sponsor	Placement/Time
June 22, 2021 Worksession Meeting	Strategic Housing Plan Update	Ben Snow	0.50
	COVID-19 Update		
July 6, 2021 Council Meeting	Public Hearing - Promontory Imagine School Preliminary PUD, Third Filing	Brad Mueller	Regular
	Resolution - Finding Substantial Compliance for the Cache Annexation	Brad Mueller	Consent
	Ordinance - Intro - Development Code Updates Chapters 7, 8, 9, 10, 11 & 12	Brad Mueller	Consent
	Ordinance - Intro - Ashcroft Draw Regional Sewer Lift Station Local Improvement District (LID)	Sean Chambers	Consent
	Ordinance - Final - Amendments to portions of the GMC Title 22, Chapter 11, adoption of the 2020 Edition of the National Electrical Code	Brad Mueller	Regular
	Ordinance - Final Preliminary PUD, Areas F, L & M 1st Amendment	Brad Mueller	Regular
	Ordinance - Final - Dispossession of the Hasbrouck and Vara Farms	Sean Chambers	Regular
July 13, 2021 Worksession Meeting	ARPA funding priorities and overview of program operation and timeline	John Karner	0.50
	Current Code Compliance Operations and Upcoming Plans	Brad Mueller	0.50
July 20, 2021 Council Meeting	CDBG Annual Plan Amendment	Ben Snow	Regular
	Ordinance - Final - Ashcroft Draw Regional Sewer Lift Station Local Improvement District (LID)	Sean Chambers	Regular
	Ordinance - Final - Rangeview Improvement District	John Karner	Regular
	Public Hearing - Development Code Updates Chapters 7, 8, 9, 10, 11 & 12	Brad Mueller	Regular
	Boards & Commissions Appointments	Anissa Hollingshead	Regular
July 27, 2021 Worksession Meeting	Transportation Master Plan Update	Raymond Lee	0.50
	COVID-19 Update		
	Executive Session: City Manager Quarterly Check-in	Roy Otto	

Council Agenda Summary

Maria Gonzalez Estevez, Human Resources Director, 970-350-9714

Title:

Consideration of an Executive Session to determine positions, develop strategy and instruct negotiators regarding collective bargaining with the Greeley Police Officers Union

Decision Options:

If this item is considered favorably by City Council, the following suggested motion is needed:

I move that the City Council go into an Executive Session to discuss the following matter as provided under C.R.S. 24-6-402(4) (e)(I) and Greeley Municipal Code 2.04.020(5): to determine positions, develop strategy and instruct negotiators regarding collective bargaining with the Greeley Police Officers Union.

Attachments:

None